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22, Gaur Galaxy, Plot No 5, Sec-5, Vaishali , Ghaziabad (U.P.) - 201010 (INDIA)

Email : **manisha_npp@yahoo.com** , arp@manishanpp.com, manisha@manishanpp.com,

www.manishanpp.com

Contact at : 09560396574, 09310343504, 0120-4124773

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Correspondence: All enquiries, editorial, business and any other, may be addressed to: The Editor-in-chief, **National Journal of Comparative Law (NJCL), H.Office: 22, Gaur Galaxy, Plot No 5, Sec-5, Vaishali , Ghaziabad (U.P.) - 201010 (INDIA)**
Email : manik.sinha2@gmail.com; arp@manishanpp.com, *manisha_npp@yahoo.com, www.manishanpp.com.*

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From the Editor-in-Chief

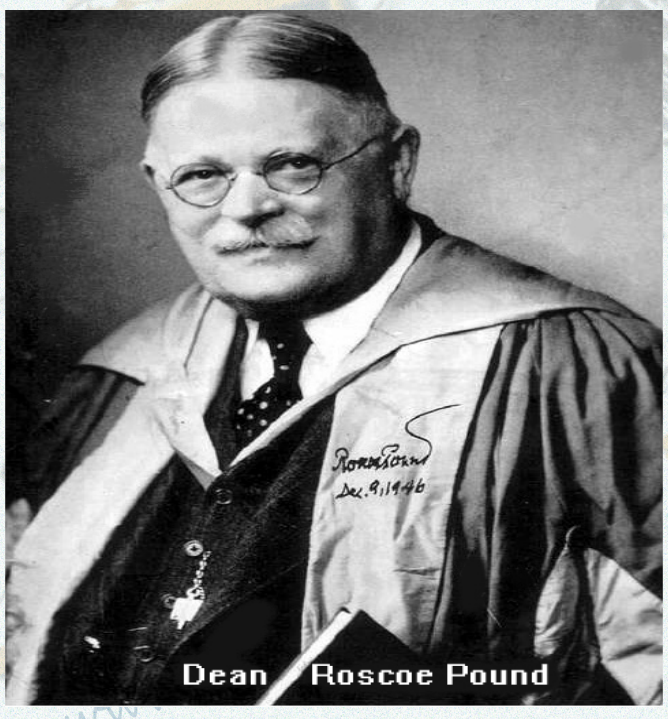
Prof. Manik Sinha

Dear learned Reader,

While giving the name **'Comparative Law'** to this Journal, we were inspired by the ideology and personality of Nathan **Roscoe Pound (1870-1964)**- the lawyer, the Judge (Auxiliary Judge in the Nebraska Supreme Court), the great scholar and a radical thinker combined in one, who had founded "Annual Bulletin of the **Comparative Law** Bureau" published by the American Bar Association. At the young age of 36 years, Pound was universally acknowledged as a radical thinker and social reformer, when he addressed the American Bar Association in 1906 and projected his idea of Sociological Jurisprudence, where he said that since the society is dynamic, hence the law cannot be static. He affirmed that the **"the Law must be stable, it must not stand still."** He asserted his view forcefully at a time when the U.S. and Europe were under the deep influence of "Natural law" theory, which believed in strict law. He went a step further when he said that the law must follow the society and also change it. Roscoe Pound, after five decades i.e. 1959, in his landmark work "Jurisprudence", developed his ideas further by the declaring the Law **as an instrument of Social Engineering and the Lawyer, Law Scholars and Jurists were the "Social Engineers."** Pond had courage to deny the Natural Law theory, that the society must follow the law, which is static. He expressed his disagreement with the Realist School ideology led by Justice Holmes (1841-1935) and Karl N. Llewellyn (1893-1964). His theory was in total contradiction with the well established dictum of French philosopher Friedrich Carlwon Savigny (1779-1861), who believed that law is not made, rather it is found and it is the history which creates law, thus codification of law would have an adverse affect. He said the jurists must go through the origin of a law and its historical transformation. Savigny's doctrine was firstly repudiated by the British, who initially tried experiment of codification of laws in its Colony in India through Lord Thomas Macaulay (1800-1859), the first Law Member of the Governor General's Council, when he drafted I.P.C., Cr.P.C. C.P.C. etc., which were subsequently codified by the British Parliament after his death. After it was found successful in India, the British adopted it in England. Similarly, the British and U.S. society also rejected the theory of the Modern Realism, which emphasized on "fact" as well as Pure Theory of the Australian Philosopher Hans Kelsen (1881-1973), who believed that "theory of law must deal with law as it is, not as it ought to be" and that is should be applicable

at all times and in all places. "It must be free from ethics, politics, sociology, history, etc. rather it should be pure." He emphasized on "norms" i.e. if X happens, then Y must happen. He calls this nature of law as "Grundnorm", the basis of fundamental norm. He was against mixing the law to natural or social sciences. His theory characterized as the Pure Theory of Law. The focus was on law alone and on none else.

Pound was an ardent follower of the German Idealist G.W.F. Hegel (1770-1831), the propounder of the philosophy of "dialectics of nature" and historical evolution. His firm commitment for the working class and labour came from the thought of the doctrine of "dialectics of nature", propounded by Hegel and revolutionary ideologies of Karl Marx (1818-1883). Marx in his work **A Contribution to the Critique of Political Economy** (1857), wrote **"it is not the consciousness of men that determines their existence, but their social existence that determines their consciousness"**. He further developed his ideology by saying that **"law is a superstructure on an economic system."** In "Communist Manifesto" (1848) authored by Marx and Angles they said that **"The history of all hitherto society is the history of class struggle."** Marx enunciated his doctrine that **"the Capitalism contained in it the seeds of its destruction"**, and the distribution of the wealth of a nation be so distributed so as to sub-serve the common good on the basis that everyone in the society must got his share of the wealth. He said "from each according to his ability to each according to his needs", and his endeavour to awaken the working class of the world to get themselves free from the bandage of exploitation by the Capitalist class by exhorting them "workers of the world unite, you have nothing to lose but your chain", and the result was a great revolution that took place around the world demolishing the Capitalist System based on exploitation and oppression of the working class. Pound advocated for the welfare of labour and working class as a result of which several important labour laws, namely-Workmen's Compensation Law, Law imposing strict liability for industrial accident, Law on Contributory Negligence, Master-Servant relationship etc. were enacted in U.S.



Roscoe Pound sailed with his ideology against the current of Modern Realism and succeeded in overcoming the other ideology. Pound's contemporary critics would

criticize his "social engineering" doctrine saying that the name of social engineer was a misnomer, for a lawyer or jurist cannot be said to be a social engineer, because in the case of an Engineer, say a Civil Engineer, if he is required to construct a bridge, then he has before him a plan or design of the proposed bridge and has with him finished products, which he shall use for the construction of the bridge, but in the case of Social Engineer, there is neither any plan nor any finished product. We believe that for a Social Engineer, he has before him a Preamble of Constitution as the plan or design of the proposed society and he also with him the Constitution and the Laws made therein as the finished products which the Social Engineer shall use it as the tool for social change. Now, again comparing with the Civil Engineer, for the Construction of the bridge, if he is required to have possessed technical skill, i.e. education and training in Civil Engineering, then much in the same way, the Social Engineer is also required to have with him the ideological commitments as the skill for shaping the future of the society, because these ideological commitments would be the tools for him for the interpretation of the Constitution and the laws. Thus most important aspect is the ideological commitment to build a nation, as a Social Engineer, he interprets the Constitution and the laws so as to achieve the goal enshrined in our Preamble, thus his interpretation must be guided by his ideology. The Preamble commands to build a Sovereign Socialist Secular Democratic Republic Nation and to secure to all its citizen Justice, Liberty, Equality and Fraternity. Former Chief Justice of India R.C. Lahoti in his work: 'Preamble- The Spirit and Backbone of the Constitution of India' (2004 p.62) has rightly observed that "The Preamble of the Constitution is not just a piece of legal drafting or a matter of mere formality. It is a code of conduct. It is a lesson in morality and ethics - to be learnt by heart and to be practiced. It contains philosophy, full of spiritualism and mysticism. It has a rhythm and message of ringing bells. Do we have ears to listen, eyes to read and hearts to understand?"

These ideological commitments comprise firstly Pond's theory of Social Engineering, the doctrines of Hegel and Marx, principle of "Ram Rajya" enunciated by the Father of the Nation, Mahatma Gandhi.

No doubt the founding fathers of our Constitution were deeply under the influence of Mahatma Gandhi, nevertheless they were also inspired by Jeremy Bentham, John Austin, Sir Henry Maine, Hegel, Marx and other contemporary social and political thinkers, but we find the shadow of Marxist ideology in our Constitution particularly in Article 19(1) (c), which guarantees to every citizen to form Union. This is the most important Fundamental Right of the labour and working class to raise their grievances before their capitalist masters and to arm them with the power of collective bargaining by means of their trade unions and similarly, Article 39(b), (c) and (d) mandates the State to secure "that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good; and "the operation of the economic system does not result in the concentration of wealth and means of

production to the common detriment" and "there is equal pay for both men and women."

We find the above ideological commitments in interpreting our Constitution with a view to achieve the National goal enshrined in the Preamble to establish an egalitarian society- free from exploitation and inequality. Justice V. R. Krishna Iyer, in his is letter dated 17.11.1986 in response to my letter had said:

"Social justice in our feudal- cum- exploitative milieu, is under great strain and stress. With the result that the Fourth World within the Third World viz: the lowliest, the lost and the last, are outlawed and out of bound for justice until a militant movement turned to the hard realities of Indian life came to rescue these vast millions currently jettisoned by the Justice System and deliver to them effective remedies. How shall we fashion new access jurisprudence, a creative affirmative action process and sensitive judiciary which will respond to those whose life-long lot is blood, toil, tears and sweat? The dynamic rule of law can emerge only if catalyzed by jurists with a vision."

We find that through several historical judgments, Justice P.N. Bhagwati (b.1920) and Justice V.R. Krishna Iyer (b.192), created revolution in the Indian judicial system, firstly, by diluting the Anglo-Saxon concept of "locus standi" by allowing any public spirited person to espouse the cause of a poor, downtrodden, indigent, depressed class, who is unable to approach the court and also inspired the Courts to have a tilt in fevour of such depressed person, when in the litigation, the other side is a wealthy person like a Capitalist and Industrialist. We find the above reflection in the following judgments rendered by Justice Bhagwati and Justice Krishna Iyer:-

1. Mumbai Kanger Sabha, Bombay Vs. Abdulbhai Faizullabhai AIR 1976 SC 1455,
2. Akhil Bhartiya Soshit Karmachari Sangh(Rly) Vs.U.O.I & othersAIR 1981 SC 298 at 317,
3. S.P. Gupta Vs. President of India & others AIR 1982 SC 149,
4. Miss Veena Seth Vs. Bihar AIR 1982 (2) SCC 583,
5. Bandhua Mukti Morcha Vs. U.O.I. & others AIR 1984 SC 802.

Justice Bhagwati in his judgment in S.P. Gupta v. President of India & Others AIR 1982 SC 149 altogether dismissed the traditional rule of standing, and replaced it with a liberalized modern rule. In this case, the Court awarded standing to advocates challenging the transfer of judges during Emergency. Describing the traditional rule as an "ancient vintage" of "an era when private law dominated the legal scene and public law had not been born," the Court concluded that the traditional rule of standing was obsolete. In its place, the Court prescribed the modern rule on standing:

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness

or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ, in the High Court under Article 226, and in case of breach of any fundamental right, in this Court under Article 32.

58 (I)t must now be regarded as well settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the Court on account of some disability or it is not practicable for him to move the Court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke assistance of the Court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go un-redressed and justice is done to him.

.....

Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. It is in this spirit that the Court has been entertaining letters for Judicial redress and treating them as writ petitions and we hope and trust that the High Courts of the country will also adopt this pro-active, goal-oriented approach.

If the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the 'chamars' belonging to the lowest strata of society no Fundamental Right to earn an honest living through their sweat and toil? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right of exploit is upheld against the government under the label of Fundamental Right, the courts are praised for their boldness and courage and their independence and fearlessness are applauded and acclaimed. But, if the Fundamental Right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so called champions of human rights frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling matters. Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty: utter grinding poverty has broken their back and sapped

their moral fibre.

They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce?"

In Municipal Council, Ratlam v. Vardhichand & others AIR 1980 SC 1622, Krishna Iyer, J. relaxed the rule of locus standi as under:

"The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British Indian vintage. If the center of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered..... "

We have, thus adopted the aforesaid values and ideologies for realizing the goal, enshrined in our Preamble with the aid of the Constitution. The Country looks upon the younger generation to come forward actively to become the social engineers to build a Sovereign, Secular, Socialist, and Democratic Republic Nation, where the commitments made by "We the People of India" on 26th day of November, 1949 for the common man of the land of **Mahatma Gandhi**, who had dreamed for **"Ram Rajya"**, are fulfilled.

Through this maiden issue of this Journal, we respectfully pay our humble tribute to **Dean Roscoe Pound** and also at the same time we dedicate this issue to the young social engineers with high hope and trust that by their vision and ideological commitments they shall realize the dreams of the founding fathers of our Constitution because the future of our Country rests with the new generation of lawyers, judges, jurists and law academicians. We firmly believe that, in the words of Justice Krishna Iyer, they "will respond to those whose life-long lot is blood, toil, tears and sweat. (?) The dynamic rule of law can emerge only if catalyzed by jurists with a vision."

Although this Journal is registered by the NISCARE as a biannual, as such it shall have two Volumes in a year, but our endeavor is to bring its parts quarterly. Although we invite papers from all learned scholars, lawyers, judges, jurists and academicians, but our emphasis shall always be to secure largest participation of younger generation, who are gifted with vision and full of vigor, energy, dynamism and zest to do something new and exceptional in this World, particularly to achieve our National goal as enshrined in our Preamble and the Constitution. We eagerly await your scholarly contribution in the form of Articles, Research papers, Review, legal news reporting and important new case-laws of the Supreme Court and High Courts.

With the best of regards,

Yours sincerely,

(Manik Sinha)

Editor-in-Chief

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PROTECTING THE TRADEMARK FOR CONSUMER PROTECTION—ISSUES AND PROBLEMS IN THE GLOBALISED ECONOMY

Dr. S. C. ROY

Associate Professor, Chanakya National Law University, Patna

Email : *scroy2010@gmail.com*

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Abstract

Consumer is the sole end and purpose of all production. Every human being who consumes anything is a consumer, regardless of his age, occupation, gender, community or religious affiliation. The earlier concept of CAVEATE EMPTOR made them more dependent and helpless. The consumers had to purchase goods on high prices without any security of brand or mark of trading, believing the goods of high quality and quantity. But even the enactment of the consumer protection Act 1986, the theory of CAVEATE VENDATOR seems insufficient in the global economy and trade. The trade marks Act 1999 provides protection to the owner but does not assure any protection in terms of slogan and quality of the product. Trademarks are suggestive not descriptive in character and it is very difficult to detect the defects and deficiency in the globalised market. Misleading advertisements on mass media easily influence the consumers. The packaged commodities have variation in contents and hidden price component too. The problems of incorrect rates are very common related to MRP, MSP along with unauthorised sale of medicines, poor customer services by the telecommunications, non-fulfilment of warranty and guarantee. Can the trademarks and consumer protection Act together protect the interest of the consumers? Can Competition, Awareness and education protect consumers in the organised sellers' market?

Key Words : Defective Trade Mark, Misleading Advertisement, Consumer Education.

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INTRODUCTION

The genesis of trademarks[1] lies in the recognition of the manufacturers, proprietors, producers of the goods or services. This shows as to who is the owner of the goods. Initially, when there was no competition, there was no need to put any mark, symbol, and letter, and number, logo to segregate the goods or services of one proprietor to another. But when there was more than one producer, the necessity of putting marks for differentiation emerged rapidly. This developed the sense of belongingness as well as the sense of responsibilities also to protect the quality of either goods or services in order to attract the customers for the development of trade and profits ultimately. The customers also got acquainted with

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this system of selecting goods or availing services for price with an assurance of good quality. In this practice, the gullible traders started taking undue advantage of the earned reputation of the mark for goods or services. Here started the need to protect the interest of the traders for the development of the trade and industries. Although earlier there was no law specific for the trade mark protection. It was protected under the common law principle. As it is a general principle that no one can take undue advantage of the labour of another without due permission and payment .Thus the protection of the trade mark under the common law principles got recognition but with the increasing trade and commerce forced to legislate specific legislation for the protection of the trade mark to protect the interest of the traders as well as the consumers. The Trade and merchandise marks Act 1958 was enforced to protect the interest of the traders. But with the globalisation of trade, this Act proved inadequate for the protection of the trade mark. Thus the trade marks Act 1999 came into existence after TRIPS agreement. The trade marks Act is an integral part of the industrial property, therefore it has been put under the domain of intellectual property. As the labour, skill and judgement are required for the creation of intellectual property, so is with the trade mark. The Act provides protection to the traders whose trade mark is registered. The unregistered trade mark is still governed under the common law principle, i.e. Law of passing off. At the same time, the GI also is a subject of trade in large quantity not only in India but all over the world, which is duplicated and marketed without any adequate protection. The consumer protection Act has opened the door- hope without spot relief. Although the traders always project that the market is competitive, therefore the customer requires to select the proper goods of particular trademarks. But the traders lure the customers with attractive advertisements which are deceptive. In this scenario the customers are bewildered and puzzled. There is a provision of consumer education but it fails to educate even the educated mass.Can the legal provisions protect the consumers alone? Whether the active involvement of the NGOs and establishment of the CONSUMER WATCH in each market to educate and protect the customers are not required?

PROTECTION OF TRADE MARKS UNDER THE TM ACT 1999

Trademark is any word, name, symbol, or device capable of distinguishing the goods or services of one person from those of others, and may include shape of goods, their packaging and combination of colours. Trade Mark includes a brand name, a hall mark, and a service mark. A trademark may be an insignia, label, name, sign, logo, device, signature, numerals, packaging, shape of goods, colour combination2 etc. In other words, a trademark is a visual symbol used in relation to any goods or services to indicate some kind of trade connection between the goods and services and the person using the mark. It usually identifies the product and acknowledges its unchanged quality and helps to advertise the product. This gives the consumer satisfactory assurance of the quality of the article he is buying. Their duration is not limited and they may last forever, subject to renewals at proper intervals. Priority of right is determined by who first

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used the mark within the particular geographic area. In those countries, which recognize common law rights, use of a mark commercially must be demonstrated before grant of registration of the mark. If they are not properly used and protected, it becomes difficult to be enforced against misuse.

Brands today are demonstrably the most powerful and sustainable wealth creators in the world. Therefore, a brand's future needs to address how to be better, stronger, more distinctive and more valued. The definition of a brand is probably more complex today than it has ever been. People have more choice today than they ever had before. So, the brand must be a bridge of trust to the consumer. Trust is undoubtedly the future of a brand. A brand has to be customer-friendly. There are many characteristics shared by the strongest brands today, the most critical of which are clarity, consistency and leadership. Around the world, millions of dollars are spent every year in building a strong brand.

A brand is the identity of a product and assures of a pre-sold quality. Corporate image is now a days being treated as a brand. It is the net result of interaction of all experiences, interaction of belief and knowledge that people have about the company, and many products have names synonymous with the brand names. A brand thus generates the goodwill of the company also and, therefore it needs to be protected. Goodwill is generated as the business is carried on and is augmented with the passage of time, and it is the mechanical quality of a particular trade, which attracts the customers. Goodwill has become a component of the total value of an undertaking that is attributable to earn profits. Therefore, brand protection becomes inevitable in the present day scenario.

Trademarks which are applied to goods and Service marks are applied to services are protectable in India apart from Certification marks3, which indicate that particular products or services meet the standards set by the certifier. Well-known marks[4] are also granted protected in India, though most countries protect only trademarks and service marks. India also recognizes, trademark rights under the Common law. Such rights are acquired, through use of a trademark in commerce and registration is not mandatory. Common law rights extend to a geographic area, in which the trademark owner carries on his business under his mark in relation to products or services to which the mark is applied.

Priority of right is determined by who first used the mark within a particular geographic area. In countries, like India, which recognize common law rights, use of a mark in commerce has to be proved before registration of the mark can be granted. In those countries that do not recognize common law trademark rights, such rights can be acquired only through registration..

Priority is determined by the filing date of the trademark application. Under the T. M. Act 1999, if a mark/brand is well-known or world famous, it is liable to be protected,

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irrespective of its use in India. Under the Indian law, initially, the registration5 of a trademark remains valid for ten years and thereafter the same can be renewed after every ten years.

Unlike as in many countries, where only use-based applications are allowed to be filed, in India applications for registration can be filed either stating 'Proposed to be used" or based on the actual date of use. For filing of a proposed-to-use application, as the term itself indicates, the mark need not have been used on the date of the application, but the and, therefore, must commence actual use of the mark in commerce before such an application matures for registration.

PROTECTION OF WELL KNOWN TRADEMARKS IN INDIA

The Trademarks Act was introduced in India in 1999 and came into effect on 15th September 2003. One of the changes that has been brought about by the Act is that it gives statutory protection to well-known Trademarks which were earlier protected under the Common law. The Registrar takes into consideration, while determining that the mark is a well-known mark. That the knowledge or recognition of the alleged well known mark in the relevant section of the public including knowledge obtained as a result of promotion of the trademark. The duration, extent and geographical area of any use for that trademark. The duration, extent and geographical area for any promotion of the trademark including advertising or publicity and presentation at fairs or exhibition of the goods or services in which the trademark appears. The duration and geographical area of any registration of any publication for registration of that trademark under this Act to the extent that they reflect the use or recognition of that trademark. The record of successful enforcements of the rights in that trademark, in particular the extent to which the trademark has been recognized as a well-known trademark by any Court or Registrar under that record. The number of actual or potential consumers of the goods or services. The number of persons involved in the channels of distribution of the goods or services. The business circle dealing with the goods and devices to which the trademark applies6.

Whereas a trademark has been determined to be well known in at least one relevant section of the public in India by any court or Registrar, the Registrar shall consider that trademark as a well-known trademark for registration under this Act. In addition to this there are several facts that are not taken into consideration by the Registrar in determining the well-known trademark. These are as follows:- **i.** The Trademark has been used in India; **ii**.That the Trademark has been registered; **iii**.That the application for registration of the Trademark has been filed in India; **iv**.That the trademark is well known in or has been registered in, or in respect of which an application for registration has been filed in any jurisdiction other than India or; that the trademark is well known to the public at large in India7. Section 11(10) deals with various aspects in relation to the Protection of well-known trademarks. It states that while considering an application for registration of a trademark, and opposition filed in respect thereof, the Registrar shall protect a well-known trademark against the identical or similar trademark, and take into consid-

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eration the bad faith involved either of the applicant or the opponent affecting the rights relating to the trade mark. However, it is also stated that if a trademark has been registered in good faith disclosing the material information to the Registrar where right to a trademark has been acquired through use in good faith before the commencement of the Trade Marks Act, 1999, then the validity of the registration of the trademark or right to the use of that trademark will not be prejudiced on the ground that such mark is identical or similar to a well-known trademark. Section 11 of the Trade Marks Act provides for facts to be considered while establishing a well-known trademark, protection of a well-known trademark and faith. Several cases have been decided by various High Courts in India in which well-known marks were protected. As at that time the Trade and Merchandise Marks Act 1958 did not provide for any provisions under which these marks could be protected, the protection was conferred in them under passing off.

In Daimlor Benz vs. **HYBO HINDUSTAN**[8], injunction was sought by the manufacturers of the Mercedes Benz Car against the defendants who were using the three pointed star in the circle and the word Benz. Injunction was granted against the defendants who were using the mark Benz on underwear apparel. In the matter of Kamal trading Co. vs. Gillette UK Limited9 injunction was sought against the defendants who were using the mark 7'O Clock on their toothbrushes. This was further reaffirmed by the Bombay High Court, which held that the plaintiff had acquired an extensive reputation in all over the world including India by using the mark 7' O Clock on razors, shaving creams. The use of an identical mark by the defendant would lead to the customer being deceived.

In Caterpillar Inc.Vs. Jorange and another 10, the defendant had started using the marks **CAT** and **CATERPILLAR** on their garments. The Plaintiffs trademark **CATERPILLAR or CAT** was registered in 175 Countries all over the world. It was also registered in India and the registrations were valid and subsisting. The Court while granting the injunction held that the plaintiffs have made out a prima facie having regard to the trans-border reputation established by it undoubtedly with regard to heavy duty vehicles all over the world and in several countries even with regard to garments. The protection of Well-known Trademarks by the New Act is in recognition of the more modern concepts of trademark protection. Though the Indian Courts were actively protecting Well-known Trademarks, Statutory protection is a step in the right direction.

TRIPS AGREEMENT AND TRADEMARKS

Before the advent of the TRIPS Agreement there were no multinational or multilateral agreements, which dealt with the protection of Geographical Indications. There were, of course International Treaties, like Paris Convention, Lisbon Agreement, which aimed at protecting Geographical Indications. However, the protection under these Treaties was limited and there were a restricted number of signatory countries. It did not prevent worldwide infringement of various Geographical Indications. Art. 22.1 of the TRIPS agreement defines Geographical Indication as Indication which identify a good as originat-

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ing in the territory of a member or a region or locality in that territory to where a given quality, reputation or other characteristic of the good is essentially attributable to the geographical origin. The difference between Geographical Indication and Trade Mark are that the former indicates the source of the product, meaning the geographical jurisdiction from which the product has originated from and the latter is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises. Article 23 provides for additional protection for geographical indication of wines and spirits. This has led to a divide between the countries who are the signatories of the TRIPS Agreement. India and a host of developing countries argue that as their Geographical Indications are agricultural in nature the additional protection provided by Article 23 should be extended to these products as well. On the other side of the fence are countries, like Australia, US and many Latin American countries, which oppose the extension of the protection of GIs. India and other developing countries argue that the protection granted by Art. 22 is insufficient in protecting their geographical Indications as the test under this Article is of unfair competition. Furthermore the burden of proof is on the plaintiff that their GI has been infringed. Article 23 provides a blanket protection to wines and spirits and in cases of infringement there is no onus on the plaintiff to prove Unfair Competition or adduce evidence in relation to the same.

The distinction between the protection offered by Article 22 and Article 23 can be illustrated with the help of an example. If a trader uses the words Darjeeling type tea, or kind, style and imitation on a pack of tea he cannot be held for violating the law as the true origin of the product has been stated on the box. This leads to a case where Geographical Indications can be misappropriated without violating the law. However under the expansive protection afforded by Article 23 there is a blanket ban on using a false Geographical Indication on any wines or spirits even though the true geographical origin might be mentioned on the product. The disparity between the protections offered by the two Articles has led India and a host of other countries to doubt the efficacy of the protection afforded to geographical Indication in relation to non-alcoholic products in the International Arena. The new GI Act 1999 that has been enacted to protect effectively various Industrial and Agricultural resources existing in India. Some of the examples involved are Basmati Rice, Alfanso mangoes, Nagpur oranges, Kanchipuram Saris, Darjeeling tea, Pashmina shawls, Agra ka Petha, Bikaner Bhujia, Malabar Peppers, Khadi and many more. The Act is also significant because the TRIPS Agreement provides that if the Geographical Indication is not protected in its Country of origin then it will not be protected in the International arena. The Registration of the Geographical Indication confers the right of exclusive use coupled with the right to obtain relief in respect to infringement. Any association of persons, producers, organization or authority established by or under the law can apply for the registration of the geographical Indications and if their application is successful their Name is entered in the Register as registered Proprietors. For example the Tea Board of India can apply for registration of Darjeeling Tea. A producer of goods can apply for registration as an authorized user. The registration of an authorized user is valid for a period of

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10 years and thereafter it can be renewed for a further period of another ten years. If there is a lapse in renewing the registration it will be removed from the Register. The Registration of Geographical Indications is not compulsory but it affords better legal protection to facilitate an action for infringement. The Act prohibits licensing, transmission, assignment or pledge in respect of any Geographical Indication. An action for infringement as well as passing off can be brought under the act. Infringement includes unfair competition. A varied number of relief's such as Injunction, Discovery of documents delivery up are available.

PROTECTION UNDER CONSUMER PROTECTION ACT

The consumer protection Act protects the interests of the consumers. The consumer[11] means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; for the purposes of the sub-clause **(i)**, "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment[12].

The provision reveals that a person claiming himself as a consumer of goods should satisfy that **THE GOODS ARE BOUGHT FOR CONSIDERATION** - *There must be a sale transaction between a seller and a buyer; the sale must be of goods; the buying of goods must be for consideration.* The terms sale, goods, and consideration have not been defined in the Consumer Protection Act. The meaning of the terms 'sale', and 'goods' is to be construed according to the Sale of Goods Act, and the meaning of the term 'consideration' is to be construed according to the Indian Contract Act.

Any person who uses the goods with the approval of the buyer is a consumer. - When a person buys goods, they may be used by his family members, relatives and friends. Any person who is making actual use of the goods may come across the defects in goods. Thus the law construe users of the goods as consumers although they may not be buyers at the same time. The words "....with the approval of the buyer" in the definition denotes that the user of the goods should be a rightful user.

A purchased a scooter which was in B's possession from the date of purchase. B was using it and taking it to the seller for repairs and service from time to time. Later on B had a complaint regarding the scooter. He sued the seller. The sell-

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er pleaded that since B did not buy the scooter, he was not a consumer under the Act. The Delhi State Commission held that B, the complainant was using it with the approval of A, the buyer, and therefore he was consumer under the Act13.Likewise any person who obtains the goods for resale is not a consumer. The term 'for resale' implies that the goods are brought for the purpose of selling them, and the expression 'for commercial purpose' is intended to cover cases other than those of resale of goods. When goods are bought to resell or commercially exploit them, such buyer or user is not a consumer under the Act, except exclusively for the purpose of earning his livelihood and by means of self-employment, then such use would not be termed as use for commercial purposes under the Act, and the user is recognised as a consumer.

When a person hires services, he may hire it for himself or for any other person. In such cases the beneficiary (or user) of these services is also a consumer. *It may be noted that in case of goods, buyer of goods for commercial purpose ceases to be a consumer under the Act.* On the other hand, a consumer of service for commercial purpose remains a consumer under the Act. S applied to Electricity Board for electricity connection for a flour mill. There was a delay in releasing the connection. S made a complaint for deficiency in service. He was held a consumer under the Act14.

An aggrieved consumer seeks redressal under the Act through the instrumentality of complaint. It does not mean that the consumer can complain against his each and every problem. The Act has provided certain grounds on which complaint can be made. Similarly, relief against these complaints can be granted within the set pattern.

Under Section 2(1)(c), A Complaint is a statement made in writing to the National Commission, the State Commission or the District Forum by a person competent to file it, containing the allegations in detail, and with a view to obtain relief for the defect in goods or deficiency in services provided under the Act15. The persons who can file a complaint under the Act16:

- A consumer, or
- Any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or
- The Central Government or any State Government,
- One or more consumers, where there are numerous consumers having the same interest.
- The definition of consumer itself includes beneficiary of goods and services. Where a young child is taken to the hospital by his parents and the child is treated by the doctor, the parents of such a minor child can file a complaint under the Act. A complaint must contain any of the following allegations:
- An unfair trade practice or a restrictive trade practice has been adopted by any trader; A sold a six months old car to B representing it to be a new one. Here B can make a complaint against A for following an unfair trade practice.
- The goods bought by him or agreed to be bought by him suffer from one or more defects; A bought a computer from B. It was not working properly

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since day one. A can make a complaint against B for supplying him a defective computer.

- The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect. A hired services of an advocate to defend himself against his landlord. The advocate did not appear every time the case was scheduled. A can make a complaint against the advocate.
- A trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods A bought a sack of cement from B who charged him Rs. 100 over and above the reserve price of the cement declared by the Government. Here A can make a complaint against B.
- Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods. A bought a tin of disinfectant powder. It had lid which was to be opened in a specific manner. Trader did not inform. A about this. While opening the lid in ordinary way, some powder flew in the eyes of A which affected his vision. Here A can make a complaint against the trader.

A complaint on behalf of the public which consists of unidentifiable consumers cannot be filed under the Act. A complaint was filed on the basis of a newspaper report that passengers travelling by flight No. 1C-401 from Calcutta to Delhi on May 13, 1989 were made to stay at the airport and the flight was delayed by 90 minutes causing great inconvenience to the passengers. It was held that such a general complaint cannot be entertained. No passenger who boarded that plane came forward or authorised the complainant to make the complaint[17]. A complaint by an individual on behalf of general public is not permitted. An unregistered association cannot file a complaint under the Act. The complainant was an association formed in the Gulf and was unregistered in India. It was held that since the petitioner was not a voluntary organization registered under any law in force in India, cannot come within clause (d) of section 2(1) of the Act and hence can't file a complaint 18. A complaint after expiry of limitation period is not permitted. A complaint cannot be filed after the lapse of two years from the date on which the cause of action arise unless the Forum is satisfied about the genuineness of the reason for not filing complaint within the prescribed time.

CONSUMER PROTECTION COUNCILS AND CONSUMERS

The Consumer Councils19, are created to advise and assist the consumers in seeking and enforcing their rights. The consumer Protection Councils provides certain rights to the consumers. ***Right to safety*** - It is right to be protected against the marketing of goods and services which are hazardous to life and property. The unsafe goods may cause death or serious injury to the user due to defective ingredients, defective design, poor workmanship, or any other reason. At times

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safety hazards are found due to absence of proper instructions to use the product. Thus it is to be ensured that—Manufacturers and traders ensure that the goods are safe for the users, in case of hazardous goods, they give clear instructions as to mode of use, consumer is informed of the risk involved in improper use of goods, and vital safety information is conveyed to consumers.

Manufacturers or distributors who become aware of the unforeseen hazards after the goods are supplied must inform the authorities and the public in order to warn consumers about such hazards. Where a product is found such as is likely to be hazardous even when properly used, traders should either recall it and modify the same, or replace it with a new product, or adequately compensate for it. ***Right to information***- It is right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, since adequate information is very important in order to make a right choice. However, consumers do not get adequate comparative information about the quality, quantity, potency, purity, standard and price of different kinds of goods or services which are available. As a result buying decisions become difficult. Therefore consumers need to be given maximum information about the wide variety of competing goods available in the market. ***Right to choose*** - The right to choose can be made meaningful by ensuring access to a variety of goods and services at competitive prices. Fair and effective competition must be encouraged so as to provide consumers with the widest range of products and services at the lowest cost. ***Right to represent*** - It is right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums. The Consumer Protection Act, 1986 has well taken care of this right by making available the instrumentality of Redressal Forums. Every consumer has a right to file complaint and be heard in that context. ***Right to redressal*** - It is a right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers. When consumers are wronged in a market place transaction, appropriate and adequate redress must be available. The Act has ensured this right by establishing Consumer Forums and recognising restrictive and unfair trade practices as a ground to make a complaint. ***Right to education -*** The right to consumer education is a right which ensures that consumers are informed about the practices prevalent in the market and the remedies available to them. For spreading this education, media, or school curriculum, or cultural activities, etc. may be used as a medium. The Central Council's object is to ensure these rights of the consumers throughout the country while the State Councils look to ensure these rights to consumers within their territories.

CONCLUDING REMARKS

The **MRTP** Act 1969 has been replaced by the competition Act20 to encourage competition among the traders for the benefit of the consumers. But there is monopoly still prevailing through group agreement in the market that they will not sell goods below particular price. **HENCE BARGAINING BECOMES IMPOSSIBLE**. Even the MRP price is bargainable but the consumers cannot bargain. Now there is advertisement that the venders will sell the product on **MSP** (maximum selling price). More so the customers feel that the sell-

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ers are kind to them. But it is not so. There are enough provisions to protect the consumer's starting with trademarks law, consumer protection law, competition law and other various provisions.

But the consumers are still bewildered. The consumers lack bargaining skill, knowledge to recognise the original trademarks, confidence to battle with the traders, delay in decision making in the consumer forums also. Thus the consumers have no security, safety against the gullible traders. Thus the consumers requires to be protected on the spot through the machinery of **CONSUMER WATCH,** a body to educate, protect and handle the dispute. The responsibility can be given to any **NGO** or any government authority in each market as **CONSUMER WATCH** .This body should be given some authority to resolve the issue on spot. The consumer watch can handle the problems related to various consumer related provisions. If the consumer watch is not in a position to resolve the dispute, then it may be referred to the **CONSUMER POLICE STATION** also. The **CONSUMER POLICE STATION** can resolve the issue on the spot as the general police station. Then the remaining dispute may be referred to the consumer forum. The reason behind such submission is obvious. The trade marks Act provides protection to the proprietor of the trade marks. The consumer has no protection under this Act. The consumer can move to the redressal forum under food adulteration or other provisions. Whereas the consumers have to purchase spurious drugs as well as other commodities. At the same time the consumers are incapable of examining the deceptively similar trademarks, ISI mark, Ag mark, certification trade mark etc. Under the consumer protection Act, there is a provision to educate the consumer but still it is in the law book. The rights of the consumers are of no use for the educated mass.More so how can the consumer move to the court for his small purchase. The consumer protection Act takes cognisance for the defects in goods and deficiency in services. It has nothing to do with the trade marks. Thus if the goods or services bear defective trade mark, the consumer has no protection on this basis. Therefore by establishment of **CONSUMER WATCH, CONSUMER POLICE STATION** with adequate authority to resolve the dispute on the spot as well as refer the matter to the consumer redressal forum, the consumers can be protected on the spot visibly as well as legally. More so, the trade marks should be declared as 'descriptive', at present it is 'suggestive 'only ,which is just to attract the attention and create confusion in the mind of the customers. The cost price and the margin of profit must be disclosed on the package of the commodities. Unless the trade marks is treated as a responsible agent between the trader-manufacturer and consumers, the consumers will be cheated and looted continuously. The trade marks Act protects the interest of the proprietor/trader/manufacturer, not the innocent consumers. In the global economy where the country is struggling for the **FDI** and economic development, the consumer's related laws seems unfriendly. Even the competition law lacks root institutions for the protection of the common consumers. More so the consumers have to bear the burden of the advertisement cost of the commodities also. Thus it is a time to educate the consumer with all possible mechanism of protection for social justice.

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I acknowledge the contribution of literatures of the various authors available in hard bound and on net and provisions of the legislations in trademarks, consumer protection and competition law for the present work.

REFERENCES

1. S. 2(zb) defines trademarks as a mark capable of represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods ,their packaging and combination of colours.
2. S.2 (m) of the Trade mark Act **1999.**
3. S. 2(g) of the trade marks Act **1999**.
4. S.2 (zg) of the trade marks Act **1999**.
5. S. 6 of the Act which provides maintenance of register of the trade mark where in the particulars of the mark is recorded.
6. S.11 (6) & (7) of the Act.
7. S. 11(9) of the Act.
8. AIR 94 Del 239.
9. **1998** IPLR 135.
10. **1999** PTC 570.
11. Section 2(d) of the consumer protection Act **1986**.
12. Explanation to S.2 (d) of the consumer protection Act **1986**.
13. Dinesh Bhagat v. Bajaj Auto Ltd. **(1992)** III CPJ 272.
14. Shamsher Khan v. Rajasthan State Electricity Board **(1993)** II CPR 6 Raj.
15. Under Section 2(1) (c) of the Act.
16. Sections 2(b) & 12 of the Act.
17. Consumer Education and Research Society, Ahmedabad v. Indian Airlines Corporation, New Delhi **(1992)** 1 CPJ 38 NC.
18. Gulf Trivandrum air Fare Forum v. Chairman & Managing Director, Air India **1991** (2) CPR 129.
19. S.6 of the consumer protection Act.
20. The competition Act **2002.**

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HEALTH - A HUMAN RIGHT?

Shishir Tiwari [1] and Gitanjali Ghosh [2]

[1] Assistant Professor, Department of Law,
North-Eastern Hill University, Shillong 793022 India
[2] Pursuing LL.M. (Human Rights), III rd trimester,
National Law School of India University (NLSIU), Bangalore

Email : *shishirlaw@gmail.com, gitanjalighosh@nls.ac.in*

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Abstract

The concept of the right to health in international human rights law is quite vague. Although the Constitution of the World Health Organization and a number of international human rights treaties recognize the right to the 'highest attainable standard of health', the phrase '*right to health*' is not a familiar one. The use of '*right to health*' can be understood in the light of several international declarations and treaties referring to a right to highest attainable standard of health. Approaching health issues through a rights perspective adds an important dimension to consideration of health status. Against this backdrop, the present paper makes a modest attempt to analyse the human rights based approach to health. Although there is a plethora of international and regional instruments relating to right to health, this paper is limited to studying the prominent ones.

Key Words : Health, Human Right, Human Rights Law, Right to Health, World Health Organization (WHO).

Pages:17 References: 38

INTRODUCTION

In the context of international human rights, economic, social and cultural rights are generally distinguished from civil and political rights. Although it is often asserted that both are equal, in practice economic, social and cultural rights are not considered as important due to various obstacles including their lack of conceptual clarity. Such a right that is characterized by particular vagueness is the international human right to health. Although the Constitution of the World Health Organization and a number of international human rights treaties recognize the right to the 'highest attainable standard of health', the phrase 'right to health' is not a familiar one. The use of 'right to health' can be understood in the light of several international declarations and treaties referring to a right to highest attainable standard of health. Approaching health issues through a rights perspective adds an important dimension to consideration of health status.

Against this backdrop, this paper,

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firstly, provides conceptual framework of the terms 'human rights' and 'right to health'. Secondly, it establishes linkages between health and human rights. Thirdly, it not only contains an analysis of the international human rights instruments related to health but also comprises, fourthly, of an analysis of governmental obligations for health under different international human rights instruments. Lastly, it evaluates the relevance of human rights based approach to health.

HUMAN RIGHTS AND RIGHT TO HEALTH - CONCEPTUAL FRAMEWORK

Human beings by virtue of being humans possess certain basic and inalienable rights which are known as human rights. Human rights are inherent in all humans irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity. These rights are also necessary as they create an environment in which people can develop their full potential and lead productive and creative lives in accordance with their needs and provide suitable conditions for the material and moral uplift of the people. Owing to their immense significance to human beings, human rights are also referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

Human rights are legally guaranteed by human rights law, protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity. They encompass what are known as civil, cultural, economic, political and social rights. Human rights are principally concerned with the relationship between the individual and the state. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.[1]

The human right to health should be understood with reference to the description of health laid down in the Preamble to the Constitution of World Health Organization[2] and repeated in many subsequent documents. The Constitution of WHO defines health as a "*state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity*".[3] This definition illustrates the indivisibility and interdependence of rights as they relate to health. Rights relating to discrimination, autonomy, information, education and participation are an integral and indivisible part of the achievement of the highest attainable standard of health, just as the enjoyment of health is inseparable from that of other rights, whether categorized as civil and political, economic, social or cultural. In the International Covenant on Economic, Social and Cultural Rights (ICESCR), the right is set forth only as "*the right to the highest attainable standard of physical and mental health*," [4] with obligations understood to encompass both the underlying preconditions necessary for health and the provision of medical care.

The broad definition of health proposed by WHO, which includes the notion of social well-being, and the more restrictive definition set out in the ICESCR reflects the very different purposes of

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these two documents. The WHO definition projects a vision of the ideal state of health as an eternal and universal goal to constantly strive towards. The ICESCR definition differentiates the two attributes of health i.e. physical and mental well-being. Elaborating further the scope of the right to health, the then United Nations High Commissioner for Human Rights, Mary Robinson stated.

The right to health does not mean the right to be healthy, nor does it mean that poor governments must put in place expensive health services for which they have no resources. But it does require governments and public authorities to put in place policies and action plans which will lead to available and accessible health care for all in the shortest possible time.[5]

The right to the highest attainable standard of health in international human rights law is a claim to a set of social arrangements- norms, institutions, laws, an enabling environment that can best secure the enjoyment of this right. The most authoritative interpretation of the right to health is outlined in Article 12 of the ICESCR. In May 2000, the Committee on Economic, Social and Cultural Rights adopted a General Comment [6] on the right to health. The General Comment [7] recognized that the right to health is closely related to and dependent upon the realization of other human rights, including the right to food, housing, work, education, participation, the enjoyment of the benefits of scientific progress and its applications, life, non- discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.

The key aspects of the right to health are clarified in the General Comment which are discussed hereafter.[8]

- **The right to health is an inclusive right.**

The Committee interpreted the right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health- related education and information, including on sexual and reproductive health.

- **The right to health contains freedoms.**

The Committee interpreted the right to health as containing freedoms which include the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment.

- **The right to health contains entitlements.**

The Committee interpreted the right to health as containing entitlements which include.

- The right to a system of health protection providing equality of opportunity for everyone to enjoy the

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highest attainable level of health;
- The right to prevention, treatment and control of diseases;
- Access to essential medicines;
- Maternal, child and reproductive health;
- Equal and timely access to basic health services;
- Health- related education and information;
- Participation of the population in health-related decision-making at the national and community levels.

The Committee interprets the right to health, as defined in Article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.

The General Comment sets out four criteria by which to evaluate the right to health.[9]

1. Availability

Functioning public health and health care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors including the underlying determinants of health such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs.

2. Accessibility

Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions viz. non- discrimination, physical accessibility, economic accessibility, and information accessibility.

3. Acceptability

All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

4. Quality

Health facilities, goods and services must be scientifically and medically appropriate and of good quality.

The meaning of the right to health can be further clarified by delineating its scope and core content. The scope constitutes the general content of the right to health and the core content consists of those elements that a state has to guarantee under any circumstances, irrespective of its available resources. With regard to the scope, the right to health can be said to embrace elements related to

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The linkages between health and human rights can be best depicted through the diagram below:

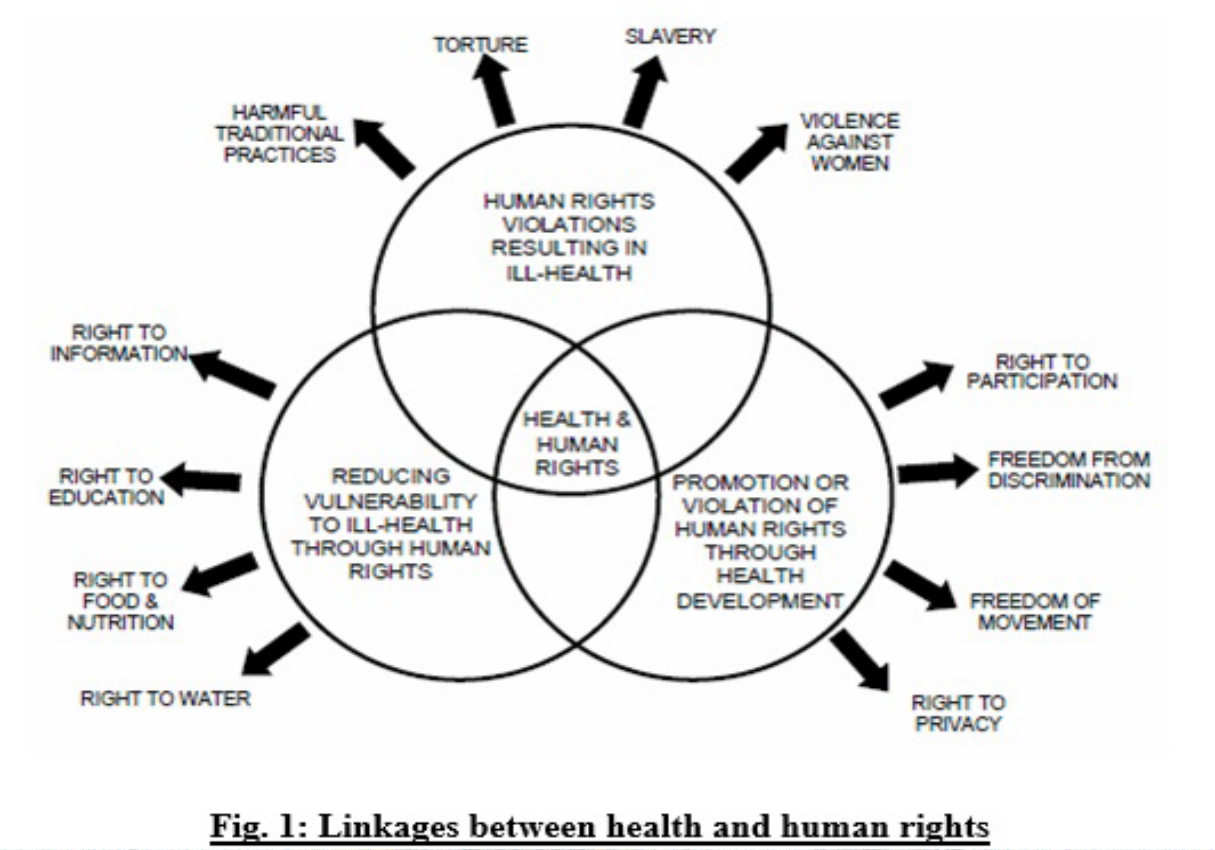

Fig. 1: Linkages between health and human rights

[Source: *http://www.searo.who.int/entity/human_rights/about/en/* (*Last visited on May 29, 2014*)].

'healthcare', and elements concerning the 'underlying preconditions for health' which may include a healthy environment, safe drinking water and adequate sanitation, occupational health, and health-related information. At the same time, it is important to demarcate limits on the right to health and not allow it to include everything that might involve health.[10]

LINKAGES BETWEEN HEALTH AND HUMAN RIGHTS

Human rights are interdependent, indivisible and interrelated. This means that violating the right to health may mar the enjoyment of other human rights and vice versa. The importance given to the "*underlying determinants of health*" i.e. the factors and conditions which protect and promote the right to health beyond health services, goods and facilities, shows that the right to health is dependent on, and contributes to, the realization of many other human rights. These include the rights to food, to water, to an adequate standard of living, to adequate housing, to freedom from discrimination, to privacy, to access to information, to participation, and the right to benefit from scientific progress and its applications.

These linkages between health and human rights may be put in the following words:

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- Violations or lack of attention to human rights can have serious health consequences (e.g. harmful traditional practices, slavery, torture and inhuman and degrading treatment, violence against women and children).
- Health policies and programmes can promote or violate human rights in their design or implementation (e.g. freedom form discrimination, individual autonomy, rights to participation, privacy and information).
- Vulnerability to ill- health can be reduced by taking steps to respect, protect and fulfil human rights (e.g. freedom from discrimination on account of race, sex and gender roles, rights to health, food and nutrition, education, housing).

In their book on Health and Human Rights, Jonathan Mann, Sofia Gruskin, Michael Grodin and George Annas have set out three ways in which human rights and health can be seen to be connected. The goal of linking health and human rights is to contribute to advance human well-being beyond what could be achieved through an isolated health or human rights based approach. There are three linkages between health and human rights which although interconnected have individual substantial practical consequences. These linkages are as follows:[11]

1. The impact of human rights violations on health

Some examples of the impact of violations of human rights on health are obvious; for example, a person who is tortured will experience health problems as a result. Other examples of impacts of human rights violations on health are less obvious. Denial of access to accurate information about HIV/AIDS is an example of a human rights violation with serious health implications, as is denial of information about contraception and HIV/AIDS prevention methods like condoms. Failure to fulfil or comply with a human rights obligation is called “nonfulfillment”.

2. The impact of health policies, programs, and practices on human rights

This connection of health and human rights can take several forms:

- Public health policies and programs are shaped with the aim of bettering the health of the population. However, states and organizations may fail in deciding what health issues will receive priority and address issues that disproportionately affect women or minority groups, in violation of the right to non-discrimination.
- States may fail to take measures to assure that the right to privacy is upheld and that confidentiality is maintained while providing health services.
- States are allowed to limit rights in the name of protecting the public’s health from epidemic disease. The state has right to deprive a person with active tuberculosis of their liberty by quarantine.

3. The inter-relationship between enjoyment of rights and conditions that promote health

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A focus on the underlying conditions that create health and well-being reveals that many of these conditions are human rights issues. The most profound underlying condition is social and economic status. Lower socio-economic status has been repeatedly linked to poorer health. Racial and gender discrimination are also underlying conditions which can negatively impact health.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RELATED TO HEALTH

The enjoyment of the highest attainable standard of health has been recognized as a fundamental right by the international community ever since the Constitution of the World Health Organization (WHO) was adopted in 1946. Many international human rights treaties and declarations contain provisions on rights and health and it is these provisions which are collectively referred to as '*right to health*'. Thus, the term '*right to health*' is used as shorthand to refer to the more detailed language contained in international treaties.[12] Three aspects of the right to health have been enshrined in the international instruments on human rights viz. the declaration of the right to health as a basic human right; the prescription of standards aimed at meeting the health needs of specific groups of persons; and the prescription of ways and means for implementing the right to health.[13]

A number of international and regional treaties and declarations use the language of rights in referring to health issues. The relevant paragraphs which cite the right to health are cited hereafter.

Preamble to the Constitution of World Health Organisation [14]

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social conditions.

Universal Declaration of Human Rights, 1948 [15]

The UDHR is merely a declaration and not a treaty but most of its provisions are considered to constitute customary international law. Article 25 of the Declaration provides that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of sickness and disability.

International Covenant on Economic, Social and Cultural Rights, 1966 [16]

Article 12(1) emphasises the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of

physical and mental health. In 2000, the Committee on Economic, Social and Cultural Rights [17] published General Comment No. 14 (2000) [18] which gives an extensive and authoritative interpretation of the right to the highest attainable standard of health contained in Article 12 of the International Covenant on Economic, Social and Cultural Rights.

It should be noted that '**highest attainable standard**' in these documents means a reasonable standard and not an absolute standard. The Constitution of the WHO emphasizes an essential element of right to health i.e. non- discrimination on the grounds of race, religion, political belief, economic, or social conditions. Non- discrimination in relation to health is reiterated in the following Conventions.

Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965 [19]

Article 5(e)(iv) of the CERD provides that State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, in the enjoyment of the right to public health, medical care, social security and social services.

Convention on the Elimination of All Forms of Discrimination against Women, 1979 [20]

Article 11(1)(f) provides that States Parties shall take all appropriate measures to eliminate discrimination against women in the enjoyment of the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

Article 12 provides that all appropriate measures should be taken by State Parties to eliminate discrimination against women in the field of health care in order to ensure on a basis of equality of men and women, access to health care services, including these related to family planning.

Convention on the Rights of the Child, 1989 [21]

Article 24 entails that States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. It also provides that States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

The Alma Ata Declaration on Primary Health Care, 1978 [22]

This declaration is of profound importance to understand health, its underlying determinants and the development of health services all around the world. It builds on human rights principles of respect for the individual, non- discrimination and participation. The Alma Ata Declaration adopted at the International Conference on Primary Health Care in 1978 used language similar to the other documents:

The Conference strongly reaffirms that health, which is a state of complete physi-

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cal, mental and social wellbeing and not merely the absence of disease or infirmity, is a fundamental human right and that the attainment of the highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 [23]

Article 25(1) provides that migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and other conditions of work, that is to say health which, according to national law and practice, are covered by these terms.

Article 28 provides that migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned.

Standard Minimum Rules for the Treatment of Prisoners, 1955 [24]

Standard Minimum Rules for the Treatment of Prisoners were adopted on 30 August 1955 by the first U.N. Congress on the Prevention of Crime and the Treatment of Offenders. Although not legally binding, these Rules provide guidelines for international and domestic law for citizens held in prisons and other forms of custody.

Rule 10 provides that all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health. Rule 15 provides that prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. Rule 17(1) provides that every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Rule 20(1) provides that every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health. Rule 25(1) provides that the medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners.

European Social Charter, 1961 [25]

Article 11 provides the right to protection of health. It provides that with a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases.

African Charter on Human and Peoples' Rights, 1981 [26]

Article 16(1) provides that every individual shall have the right to enjoy the best attainable state of physical and mental health.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988 [27]

Article 10(1) provides that everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.

Governmental Obligations for Health under International Human Rights Instruments

With respect to ICESCR, the obligation of States under it to implement the right to health is a progressive obligation. Article 2 of the Covenant provides that a State is not required immediately and fully to implement the right but only to achieve progressively the full realization of the right. The progressive realization of the right to health over a period of time should not be interpreted as depriving States parties' obligations of all meaningful content. Rather, progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of Article 12.[28] In other words, the State parties are required to take steps to achieve the rights. The steps necessary to achieve the full realization of the right to health are listed in Article 12(2) which are as follows:

- The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- The improvement of all aspects of environmental and industrial hygiene;
- The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

In all countries, resource and other constraints can make it impossible for a government to fulfil all rights immediately and completely. The human rights machinery recognizes this and acknowledges that, in practical terms, a commitment to the right to health is going to require more than just passing a law. It will require financial resources, trained personnel, facilities and, more than anything else, a sustainable infrastructure. Therefore, realization of rights is generally understood to be a matter of progressive realization of making steady progress towards a goal. [29]

The principle of 'progressive realization' is fundamental to the achievement of human rights. This is critical for resource-poor countries that are responsible for striving towards human rights goals to the maximum extent possible. It is also of relevance to wealthier countries in that they are responsible for respecting, protecting and fulfilling human rights not only within their own borders, but through their engagement in international assistance and cooperation.

However, there is a certain core in the right to health which consists of a set of elements that states have to guarantee immediately, irrespective of their availa-

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ble resources. The core content stands in contrast to some elements of the right to health that are to be realized 'progressively.' This core content includes those elements without which the right loses its significance; it refers to those elements that encompass the essence of the right.[30] In other words, while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. For e.g. States parties have immediate obligations such as the guarantee that the right will be exercised without discrimination of any kind and the obligation to take steps towards the full realization of article 12.[31]

The steps given in Article 12(2) of ICESCR provide a starting point to understand the obligation to respect the right to health. Their generality makes it difficult to determine specific obligations involved. WHO, in their program on Primary Health Care and Health for All by the Year 2000, has elaborated the means that can be used by both economically developed and developing countries to achieve the 'highest attainable standard' of health. The Primary Health Care approach is described in the Declaration of Alma-Ata, adopted in 1978 at an international WHO conference. The essential aspects of that approach may be summarized as follows: [32]

1. an emphasis on preventive health measures (immunization, family planning) more than on curative measures;
2. the importance of participation of individuals and groups in the planning and implementation of health care;
3. an emphasis on maternal and child health care;
4. the importance of education concerning health problems;
5. high priority to be given in provision of health care to vulnerable and high risk groups, such as women, children, underprivileged elements of society;
6. equal access of individuals and families to health care at a cost the community can afford.

With regard to implementation of the right to health, while on one hand, the poor countries are unable to provide an adequate level of health care or to provide the economic development which is necessary for an adequate health system, on the other hand, the cost of health care has also become a problem in developed countries. Three main obstacles to improving health within states are misallocation of resources, inequity in health care, and inefficiency. Nevertheless, all ratifying states have obligations under Article 12 of ICESCR regardless of their degree of economic development.

Article 2(1) of ICESCR provides that each State Party undertakes to take steps for progressive realization of the rights enshrined in the Covenant 'to the maximum of its available resources.' This phrase does not imply that states with very limited resources have no obligations under the Covenant. All countries have some 'available resources' although it may be less in comparison with other countries. Hence, under the Covenant all ratifying states are obligated to respect the right to health, regardless of their level of economic development.

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights

was adopted in 1986.[33] The Principles specify that the obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available. They also assert that states parties are obligated to ensure respect for minimum subsistence rights for all regardless of the level of economic development, and that 'resources available' refers to both the resources within a State and those available from the international community through international cooperation and assistance. However, the specific obligations of a country will vary depending on resources.

The Committee on Economic, Social and Cultural Rights has also stressed that States have a core minimum obligation to ensure the satisfaction of minimum essential levels of each of the rights under the Covenant. While these essential levels are, to some extent, resource-dependent, they should be given priority by the State in its efforts to realize the rights under the Covenant. With respect to the right to health, the Committee has underlined that States must ensure:

- The right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- Access to the minimum essential food which is nutritionally adequate and safe;
- Access to shelter, housing and sanitation and an adequate supply of safe drinking water;
- The provision of essential drugs;
- Equitable distribution of all health facilities, goods and services.

Governments are not only responsible for not directly violating rights, but also for ensuring the conditions which enable individuals to realize their rights as fully as possible. This is understood as an obligation to respect rights (i.e. to refrain from violating rights), to protect rights (i.e. to ensure that non- state actors do not violate rights), and to fulfil rights (i.e. to ensure that there are laws, structures, mechanisms and resources in support of human rights). Governments are legally responsible for complying with these obligations for every human rights document they have ratified. Governmental obligations towards ensuring that every individual enjoys the right to health are summarized below:

• Obligation to respect

The obligation to respect requires States to refrain from interfering directly or indirectly with the right to health. For example, States should refrain from denying or limiting access to health-care services; from marketing unsafe drugs; from imposing discriminatory practices relating to women's health status and needs; from limiting access to contraceptives and other means of maintaining sexual and reproductive health; from withholding, censoring or misrepresenting health information; and from infringing on the right to privacy (e.g., of persons living with HIV/AIDS).

A government violates its responsibility to respect the right to health when it is immediately responsible for providing medical care to certain populations, such as disabled, and it arbitrarily decides to withhold that care.

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• **Obligation to protect**

The obligation to protect requires States to prevent third parties from interfering with the right to health and offering redress that people both know about and can also access, in the event of a violation. This means the state would be responsible for making it illegal to deny insurance or health care to people on the basis of a health condition, and they would be responsible for providing redress mechanism that people know about and can access in the face of occurrence of violation.

The obligation to protect can be said to entail the following:

- States should adopt legislation or other measures to ensure that private actors conform with human rights standards when providing health care or other services (such as regulating the composition of food products);
- control the marketing of medical equipment and medicines by private actors;
- ensure that privatization does not constitute a threat to the availability, accessibility, acceptability and quality of health-care facilities, goods and services;
- protect individuals from acts by third parties that may be harmful to their right to health, e.g., prevent women from undergoing harmful traditional practices or third parties from coercing them to do so by enacting laws that specifically prohibit female genital mutilation;
- ensure that third parties do not limit people's access to health related information and services, including environmental health; and
- ensure that health professionals provide care to persons with disabilities with their free and informed consent.

• **Obligation to fulfil**

Fulfilling the right means State has to take all appropriate measures—including but not limited to legislative, administrative, budgetary and judicial—towards fulfilment of the right, including the obligation to promote the right in question. A state could be found to be in violation of the right to health if it failed to incrementally allocate sufficient resources to meet the public health needs of the communities within its borders.

RELEVANCE OF HUMAN RIGHTS BASED APPROACH TO HEALTH

In a rights-based approach, every human being is recognized both as a person and as a right-holder. A rights-based approach strives to secure the freedom, well-being and dignity of all people everywhere, within the framework of essential standards and principles, duties and obligations. The rights-based approach supports mechanisms to ensure that entitlements are attained and safeguarded. The question that arises is what human rights have to do with health issues? Recognition of health as human right is a remarkable development in the field of international law. Virginia A. Leary in her article 'The Right to Health in International Human Rights Law' has analysed the significance and advantage of having a rights approach to health issues. She has developed a rights based perspective on health by linking health status to the elements of rights, viz. human dignity, non-discrimination, participation, entitlement, interdependent, limitations.

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She begins by saying that conceptualizing something as a right emphasizes its exceptional importance as a social or public goal. The use of rights bestows a special status on those goals. In the words of Ronald Dworkin, categorizing something as a right means that the right 'trumps' many other claims or goods.[35] Therefore, the use of rights language in health issues emphasizes the importance of health care and health status. Conceptualizing health status in terms of rights underscores health as a social good and not solely a medical, technical, or economic problem.

Dignity as the Foundation of Human Rights

The Preamble to UDHR vouches for the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. The concept of rights arises out of a perception of the inherent dignity of every human being. A rights based approach to health emphasizes that the dignity of each person must be central in all aspects of health thereby rejecting the utilitarian principle which talks about the good of the collective.

Equality or Non-Discrimination Principle Non- discrimination is a fundamental principle of human rights law. The rights approach with emphasis on non-discrimination implies rejection of market- based approach to health care and health status. In the words of Alma Ata Declaration on Primary Health Care of 1978:

The existing gross inequality in the health status of the people particularly between developed and developing countries as well as within countries is politically, socially and economically unacceptable and is, therefore, of common concern to all countries.

Dr. Jonathan Mann has pointed out that societal discrimination and lack of respect for fundamental human rights directly affect the health status of the population.[36]

Participation

Participation of individuals and groups in matters that affect them is important for the protection of all human rights. The importance of participation in health matters has been recognized by WHO in the Alma Ata Declaration wherein it is stated that the people have the right and duty to participate individually and collectively in the planning and implementation of their health care.

Entitlement

The concept of a right implies entitlement to the subject of that right. The Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accords) succinctly provides that individuals are entitled to '**know and act on their rights**'.[37] This does not necessarily imply resort to lawsuits, which may not always be the best means of asserting rights. Other measures may be resorted to, such as administrative agencies or tribunals or creation of the role of ombudsman to respond to citizens' complaints.

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Interdependence of Human Rights

Human rights are interdependent i.e. particular rights may depend on other rights for their fulfilment. It has been frequently reiterated by human rights organizations that all human rights and fundamental freedoms are indivisible and interdependent.[38] Hence, the right to health cannot be effectively protected without respect for other recognized rights including prohibition of discrimination, and the right of persons to participate in decisions affecting them.

Limitations on Rights

Rights are not absolute and may be subject to limitations on certain grounds. Protection of public health is one of the accepted grounds for which limitations are permitted in the International Covenant on Civil and Political Rights and in other human rights instruments. Under the Covenant, protection of public health is a permissible ground for limiting the rights to liberty of movement, freedom of religion, freedom of expression and the right to freedom of association. Conversely, there is also a lurking danger that such restrictions on rights may not be justified on health grounds. Hence, limitations on rights must be scrutinized to determine their necessity. Under international human rights law, national decisions to limit rights may be overseen by international monitoring committees, which can require states to provide adequate justifications for rights limitations.

CONCLUSION

In the words of Virginia Leary, the term right to health is shorthand for the wider term 'right to the highest attainable standard of health' which is guaranteed in several international and regional instruments. The right to the highest attainable standard of health in international human rights law is a claim to a set of social arrangements- norms, institutions, laws, an enabling environment that can best secure the enjoyment of this right.

Although the right to health is to be progressively realized by the i.e. a State is not required immediately and fully to implement the right but only to achieve progressively the full realization of the right, it should not be interpreted as depriving States parties' obligations of all meaningful content. Rather, progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of Article 12.

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REFERENCES

1. Paragraph 5, Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights, 1993, available at *http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf* (Last visited on May 25, 2014).
2. The Constitution was adopted by the

International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 States and entered into force on 7 April 1948.

3. Preamble to the Constitution of the World Health Organisation, available at *http://www.who.int/governance/eb/who_constitution_en.pdf* (Last visited on May 25, 2014).

4. Article 12 (1), International Covenant on Economic, Social and Cultural Rights.

5. 25 Questions & Answers on Health and Human Rights, 10, available at *http://www.who.int/hhr/information/25%20Questions%20and%20Answers%20on%20Health%20and%20Human%20Rights.pdf* (Last visited on June 9, 2014).

6. General Comments serve to clarify the nature and content of individual rights and States Parties obligations.

7. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, available at *http://www.refworld.org/docid/4538838d0.html* (Last visited on May 25, 2014).

8. Id.

9. Id.

10. Brigit Toebes, Towards an Improved Understanding of the International Human Right to Health, 21 *Human Rights Quarterly* 661, 675-76 (1999).

11. J. Mann, S. Gruskin, M. Grodin and G. Annas (eds.), HEALTH AND HUMAN RIGHTS: A READER, 11 (1st edn., 1999).

12. Virginia A. Leary, *The Right to Health in International Human Rights Law,* 1(1) Health And Human Rights 24, 28 (1994).

13. Rene Jean Dupuy ed., The Right to Health as a Human Right, Workshop, The Hague Academy of International Law and the United Nations University, 1979.

14. Constitution of the World Health Organization, 14 U.N.T.S. 186.

15. U.N. Doc. A/RES/217(III) (1948). Also available at *http://www.un.org/en/documents/udhr/* .

16. U.N. Doc. A/6316 (1966); 993 U.N.T.S. 3. Also available at *http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf* (Last visited on May 25, 2014).

17. The Committee on Economic, Social and Cultural Rights (CESCR) is the body of 18 independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

18. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, available at *http://www.refworld.org/docid/4538838d0.html* (Last visited on May 25, 2014).

19. 660 U.N.T.S. 195. Also available at *http://*

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www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf (Last visited on May 29, 2014).

20. U.N. Doc. A/34/46 (1980). Also available at *http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf* .

21. U.N. Doc. A/44/49 (1989). Also available at *http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf.*

22. Declaration of Alma-Ata. International Conference on Primary Health Care, Alma-Ata, USSR, 6–12 September 1978, available at *http://www.who.int/publications/almaata_declaration_en.pdf* (Last visited on May 29, 2014).

23. U.N. Doc. A/RES/45/158 (1991). Also available at *http://www.refworld.org/docid/3ae6b3980.html.*

24. U.N. Doc. A/CONF/6/1, annex I, A (1956). Also available at *http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf.*

25. European Social Charter is available at *http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm* (Last visited on May 29, 2014).

26. O.A.U. Doc. CAB/LEG/67/3. Also available at *http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf* .

27. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") is available at *http://www.oas.org/juridico/english/treaties/a-52.html* (Last visited on May 29, 2014).

28. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, available at *http://www.refworld.org/docid/4538838d0.html* (Last visited on May 29, 2014).

29. Article 2(1), INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966.

30. Brigit Toebes, Towards an Improved Understanding of the International Human Right to Health, 21 *Human Rights Quarterly* 661, 676 (1999).

31. Note 28.

32. Virginia A. Leary, The Right to Health in International Human Rights Law, 1(1) *Health And Human Rights* 24, 42 (1994).

33. The Limburg Principles is available at *http://www.refworld.org/docid/48abd5790.html* (Last visited on May 29, 2014).

34. A. Eide, Economic, Social and Cultural Rights as Human Rights in ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK, 9-28 (A. Eide *et. al.,* ed., 1995).

35. Virginia A. Leary, *The Right to Health in International Human Rights Law*, 1(1) Health And Human Rights 24, 36 (1994).

36. Id, at 38.

37. Id. at 39.

38. Id. at 39.

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COPYRIGHT: ISSUES AND CHALLENGES IN DIGITAL ENVIRONMENT

Bibhash Kumar Mishra

Assistant Librarian,
Kumaun University, SSJ Campus
Almora (Uttarakhand)

Email : *bkmishra15@rediffmail.com*

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Abstract

This paper content gives a brief idea about the copyright act, IT act and also the amendment made to the act with undated details. Most digital library project planners are aware of their intellectual property issues that must be resolved in order to successfully deploy them in libraries. Libraries are leaders in trying to maintain a balance of power between copyright and old users.

Key Words: Copyright, IPR, Digital Copyright, Digital Resources, Digital Library.

Pages : 05 References: 05

INTRODUCTION

The Copyright Act, 1957 came into effect from January 1958. This Act has been amended six times since then, i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. The Copyright (Amendment) Act, 2012 is the most substantial. The main reasons for amendments to the Copyright Act, 1957 include to bring the Act in conformity with WCT and WPPT; to protect the Music and Film Industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; Incidental changes; to remove operational facilities; and enforcement of rights. Some of the important amendments to the Copyright Act in 2012 are extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information, and liability of internet service provider and introduction of statutory licences for cover versions and broadcasting organizations; ensuring right to receive royalties for authors, and music composers, exclusive economic and moral rights to performers, equal membership rights in copyright societies for authors and other right owners and exception of copyrights for physically disabled to access any works (MHRD, Copyright Office).

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WHAT IS COPYRIGHT?

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work.

WHY SHOULD COPYRIGHT BE PROTECTED?

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create (MHRD, A HAND BOOK OF COPYRIGHT LAW).

SCOPE OF COPYRIGHT

Copyright is a creation of the statute. No person is entitled to copyright or any similar right in any work except those provided under the Copyright Act. Copyright law is, in essence, concerned with the negative right of preventing copying of physical material existing in the field of literature and the arts. Its object is to protect the writer or the creator of the original work from the unauthorized reproduction or exploitation of his materials. The right also extends to prevent others, from exercising without authority any other form of right attached to copyright, for example, in the case of literary work the right of making a dramatic version, cinematograph version, translation, adaptation or abridgement (Narayanan).

COPYRIGHT AND LIBRARIES

Now, all the Libraries are providing reprographic service to their users, especially Academic, Research and special Libraries. It is a clear violation of the Copyright Act for this a permission of the concerned authority (creator of work) is essential. Sometime the photocopying is done not for the readers but for Library itself to fulfill the additional requirement of the Library. But the Section 52, Clause (0) of Copyright Act provide certain exceptions to infringement as three copies of a book under the direction of public Library Librarian, for use of the Library if the books are not available in India, would not be infringement; this protection is available for public Library Librarians only. S.R. Rangnathan's Laws are (books are for use, books are for all, all books have its readers) in total contravention. A Library is a place where there should be free transfer of information and knowledge should be meant for learning not for selling/buying purpose.

In the new digital era, the Libraries and readers have been enjoying with the recent technology but they have to positively understand the concept of IPR and Information Officers should keep themselves up to date about the IPR &

Copyright Act, and there should be a provision of short term courses/training for the purposes. It is an obligation of the Librarian to keep usera aware about copyright.

COPYRIGHT, CONTRACTS AND DIGITAL RESOURCES

Generally, If you acquire copies of, or access to, material in digital form, your rights to use the material will primarily be governed by a license from the copyright owner, rather than by provisions in the Copyright Act. Examples of licensed digital resources are:

- Online journals:
- Online databases;
- Computer programs;
- E-books;
- CD-ROM, DVD, VOD;
- Digital images; or
- CD-ROMs or software that accompany magazines or books;

Using this type of material raises copyright issues because the way you will often want to use it will involve multiple reproductions and communications.

COMPUTER PROGRAMS

Computer programs are a set of instructions capable of, when incorporated in a machine readable medium, causing a machine having information processing capabilities to indicate, perform or achieve a particular function, task or result. The Act Categorized 'Computer program' as being part of the class of literary works, in the matter of rights infringement it made separate provision for computer programs.

DATABASES

No downloading at all: No part of transmission may be copied, downloaded, stored in a retrieval system, further transmitted or otherwise reproduced, stored.

Online journals, e-books, downloading of images etc., are some limitations for downloading varying by publishers.

TECHNOLOGICAL PROTECTION MEASURES & ELECTRONICS RIGHTS MANAGEMENT INFORMATION

Copyright owners can generally take legal action against anyone who, for example: **(i)** circumvent an access control measure such as encryption or a password. **(ii)** Makes, imports of trade in a device to get around a technological protection measure and **(iii)** offers a circumvention service (Arun Kumar Biswal).

COPYRIGHT PROTECTION IN INDIA

India has one of the most modern copyright protection laws in the world. Major development in the area of copyright during 1999 was the amendment to the Copyright Act 1957 to make it fully compatible with provisions of the TRIPs Agreement called the Copyright (Amendment) Act, 1999, this amendment was signed by the President of India on December 30, 1999 and came into force on January 15, 2000.

The earlier 1994 amendment to the Copyright Act of 1957 had provided protection to all original literary, dramatic, musical and artistic works, cinematography, films and sound recordings. It also brought sectors such as satellite broadcasting, computer software and digital technology

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under Indian copyright protection.

The Copyright Act is now in full conformity with the TRIPs obligations. The other important development during 1999 was the issuance of the International Copyright Order, 1999 extending the provisions of the Copyright Act of nationals of all World Trade Organization (WTO) member countries.

Concern has been expressed about the allegedly slow judicial system in India and the procedural issues involved in trial and conviction. The Indian judiciary is handling cases as expeditiously as possible. The year that has gone by has again witnessed the versatility of the impartial and independent Indian judiciary when it comes to the issues of protection of intellectual property rights, amplified by the encouraging trends with Indian courts plugging in gaps in the statute with The Copyright Act, 1957 prescribes mandatory punishment for piracy of copyrighted matter commensurate with the gravity of the offense with an effect to deter infringement, in compliance with the TRIPs Agreement.

Civil proceedings against piracy have been quite effective – a result unique in the global enforcement against copyright piracy. For instance, in 1999, the Motion Pictures Association (MPA), filed 3 civil actions against 3 Indian cable networks and obtained injective relief covering 45 cities and 8 million cable homes. MPA has estimated that by these injections alone, cable piracy has been brought down by 50%.

Indian enforcement agencies are working effectively and there is a decline in the levels of piracy in India. In addition to intensifying raids against copyright infringers, the Government has taken a number of measures strengthen the enforcement of copyright law (Saha).

COPYRIGHT AMENDMENT ACT 2012

Copyright Amendment Act 2012 comes into effect The Copyright (Amendment) Act 2012 passed by Parliament has come into effect declaring authors as owners of the copyright, which cannot be assigned to the producers as was the practice till now. The act has been published in the official gazette.

It will now become mandatory for broadcasters – both radio and television- to pay royalty to the owners of the copyright each time a work of art is broadcast. It bans people from bringing out cover version of any literary, dramatic or musical work for five years from the first recording of original creation. The law also seeks to remove operational difficulties and address newer issues related to the digital world. The amendments to the Copyright Act 1958, aims at according unassignable rights to 'creative artists' such as lyricists, playback singers, music directors, film directors and dialogue writers who will be paid royalty every time the movie they have worked in is aired on a television channel. A statutory license is an exception under Copyright Act. It puts limits on the basic principle of the copyright law that authors and creators should have the exclusive right to control the dissemination of their work. Under statutory licensing, the royalty or remuneration for the author or creator is specified by the law or such set negotiation (Gupta).

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CONCLUSION

Indian copyright law is equipped to face a number of new challenges posted by digital technology, it, in keeping with its own past history needs to include new provision also as there are still many issues left un-addressed. The fair use of print material by allowing reproduction in a reasonable way for private study, research or education is well understood. But in the context of digital information, because it is distributed to a large community, it is difficult to judge, comprehend "fair use", access and control the infringement of copyright law.

REFERENCES

1. Arun Kumar Biswal, Nirupama Panda and Barnali Ray. "Protection of Copyright Act and Information Technology Act in Digital Environment: A Challange for Library and IT Professionals." National Conference on ICT Impact on Knowledge and Information Management. New Delhi: Arihant Prakashan, 2010. 330-337.

2. Gupta, Gunjan Gupta and Shyam Bihari. "Copyright: Issues in Digital Library Enviorenment." National Conference on Managing Information Resources in Digital Enviorenment. New Delhi: SIRs, 2013. 59-64.

3. MHRD. Copyright Office. 26 Jun 2014 <*http://copyright.gov.in/*>.—. "A HAND BOOK OF COPYRIGHT LAW." Copyright Office. 26 June 2014 <*http://copyright.gov.in/Documents/handbook.html*>.

4. Narayanan, P. Intellectual property Law. Kolkata: Eastern Law House, 2006.

5. Saha, Jayanta Kumar. "Intellectual Property Rights in India." Singh, Shiv Sahai. Law of intellectual Property Right. New Delhi: Deep & Deep Publications, 2005. 37-48.

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GST – THE CHALLENGE OF IMPLEMENTATION

Dr. Manoj Mishra

Vice Principal Admerit College, Patna,
GL Chanakya National Law University, Patna

Email : *manojbashist@gmail.com*

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Abstract

Goods and Service Tax (GST) has been proposed for long and the first target to implement GST was on 1st April, 2010, but so far it has not been implemented. The paper studies the reasons for not being able to implement GST. A two-rate structure –a lower rate for necessary items and goods of basic importance and a standard rate for goods in general—proposed with a special rate Goods and Service Tax (GST) has been proposed for long and the first target to implement GST was on 1st April, 2010, but so far it has not been implemented. The paper studies the reasons for not being able to implement GST. A two-rate structure –a lower rate for necessary items and goods of basic importance and a standard rate for goods in general—proposed with a special rate for precious metals and a list of exempted items. Exports would be zero-rated. The GST will be Goods and Service Tax (GST) has been proposed for long and the first target to implement GST was on 1st April, 2010, but so far it has not been implemented. The paper studies the reasons for Goods and Service Tax (GST) has been proposed for long and the first target to implement GST was on 1st April, 2010, but so far it has not been implemented. The paper studies the reasons for not being able to implement GST. A two-rate structure –a lower rate for necessary items and goods of basic importance and a standard rate for goods in general—proposed with a special rate for precious metals and a list of exempted items. Exports would be zero-rated. The GST will be levied on imports with necessary Constitutional Amendments. Initially, the GST was first proposed the variant preferred by the federal government was a so-called **"National Sales Tax"** (NST) that would have been administered federally on a on a uniform base and at uniform rates, , with the proceeds being divided between the federal and provincial governments and among the provincial governments, but it could not materialize. A Strong center and willingness to change the system is a perfect prescription for implementation of GST.

Key Words :Goods and Service Tax (GST), Indirect Tax, Federal Structure, Royal Commission on Taxation, National Sales Tax (NST), Constitutional Amendments.

Pages:12 References: 20

INTRODUCTION

THE PROBLEM

Fiscal deficit has been the bane of any attempt to control rising inflation and lower interest rates for development of the country. None of this is

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possible without additional income of the government, and this is possible through proper taxation. Goods and service tax was to have been implemented in April, 2010. However, the effort of having implemented VAT in a hurry has resulted in a system which is devoid of several essential features of VAT. The present VAT lacks the essential features of VAT having multiple tax slabs, different tax rules in different states and lacks uniform national consensus on tax policies. [1] The government was wary of implementing another VAT like GST which will not have the basic fundamentals, but just the name. The federal structure of the government means there should be a trust in the center state relationship, with different political affiliations of the government, it is impossible to reconcile the differences. This has resulted in the implementation of GST getting deferred repeatedly. A comparison of the different systems in federations such as Brazil, Mexico, Germany, Canada and the European Union, is a favourite pastime of fiscal experts. There is no perfectly satisfactory solution to the problem of taxation of inter-state sale in federations (Bird and Gendron, 2001). While VAT is widely regarded as a good tax for countries trading with one another, it is generally seen as a bad tax to give to lower level jurisdiction in a federation ("**Recent Developments in Tax Coordination**" by Michael Keen, Page 409, *Canadian Tax Journal,* 2000, Vol 48 No.2). [2] This was the reason many states cried foul. While the trader was afraid of what is going to come, the states feared loss of control and revenue. With dual system of taxation maintained implementation of VAT in India become smooth. The traders soon realized nothing much was going to change with the basic system being maintained. This also turned out to be the single largest reason for VAT to lose its basic advantages, and paved the way for GST to follow with improvements to take care of the disadvantages. However, real change does meet resistance and it is yet to be seen how much of the change is retained by the time GST gets implemented as deadlines for implementation keep changing in face of resistance.

THE PRESENT SCENARIO

After marathon efforts lasting almost a decade, a majority of the Indian states switched over to VAT system from April 1, 2005. Yet, the structure of VAT adopted by the states, in its present form, is found to have several anomalies which can be detrimental to the smooth functioning of VAT. This included Bihar, where Bihar Value Added Tax Act, 2005 was implemented. The National Institute of Public Finance and Policy (NIPFP), in a path breaking study recommend replacing the existing State sales Tax with state level VAT and accordingly an Empowered Committee of State Finance Ministers was constituted to chart a road map and structure the modalities of VAT implementation. They finally came up with a structure and design of state level VAT with broadly uniform features all over the country, yet it fits into the scheme of distribution of legislative powers in the constitution. [3]

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"GST is now in a shape which can be implemented. "The proposed GST, as per the Discussion Paper, subsumes the following taxes/duties of the Centre: central excise; additional excise duties; service tax; additional and special additional customs duties; surcharges and cesses. The following State taxes and levies would also be subsumed under the GST: VAT / sales tax; entertainment tax (unless it is levied by local bodies); luxury tax; taxes on lottery, betting and gambling; State cesses and surcharges in so far as they relate to supply of goods and services; entry tax not in lieu of octroi.

GST Rate Structure

A two-rate structure –a lower rate for necessary items and goods of basic importance and a standard rate for goods in general—proposed with a special rate for precious metals and a list of exempted items. Exports would be zero-rated. The GST will be levied on imports with necessary Constitutional Amendments". [4]

STUDY OF INTERNATIONAL TAXATION SYSTEMS

Now for GST the example of Canada is there before them to study and implement. Canada has a system in place which is not only successful but to a large extent ideal for a country like India.

Let us study the System in Canada in detail. At present Canada is probably the most interesting country in the world for those interested in sales taxes. There is a federal VAT, the Goods and Services Tax (GST), that is imposed throughout the country. In one province (Alberta), the GST is the only sales tax. In four provinces (British Columbia, Saskatchewan, Manitoba, and Ontario), in addition to the GST there is a separate RST applied to the GST-exclusive tax base. (In one province (Prince Edward Island), the provincial RST is applied to the GST-inclusive tax base.) In three provinces (Newfoundland, Nova Scotia, and New Brunswick), there is a joint federal-provincial VAT, called the Harmonized Sales Tax (HST) and administered by the federal government at a uniform rate. Finally, in one province (Quebec) there is a provincial VAT, the Quebec Sales Tax (QST), applied to the GST-inclusive tax base. The QST is administered by the government of Quebec, which also administers the GST in the province on behalf of the federal government.

This variety of indirect tax was the result of the federal decision in 1991 to replace an archaic federal manufacturers' sales tax with the GST, a fairly standard invoice-credit destination-basis consumption VAT. This sparkling new tax quickly ran into heavy political and popular opposition, however, not least because of its implications for provincial finances, which depended heavily on (uncoordinated) RSTs (Bird 1994).

Such problems were not unexpected. When the GST was first proposed the variant preferred by the federal

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government was a so-called "National Sales Tax" (NST) that would have been administered federally on a uniform base and at uniform rates, with the proceeds being divided between the federal and provincial governments and among the provincial governments in accordance with some formula.

The political cost and difficulty of arriving at such a joint tax design suggested an alternative approach to sales tax reform. Instead of trying to devise some form of "dual" (same base, different rates) or "joint" (same base and rates, with a formula-based distribution) form of NST, why not turn over the entire sales tax area to one level of government or the other? The most obvious way to go, as discussed in the previous Section, would be to follow the German model and turn the sales tax over to the federal government. In Canada, however, the Royal Commission on Taxation (1966) had earlier recommended that the federal government should turn over all sales taxes to the provinces. Even after the GST was introduced, Ip and Mintz (1992) argued that the federal GST should be replaced by appropriately augmented provincial (retail) sales and excise taxes both to reduce the administrative and compliance costs of taxation and to give more revenue discretion to provinces and hence make them more responsible for financing more of their own spending on health or education, for example.

Such a change, however, would have required some provinces to apply RST rates as high as 19 percent. No country has ever applied such high RST rates successfully. Moreover, moving from a GST to a provincial RST would in effect shift taxes back on to business inputs, thus reversing the clearest economic gain from moving to a VAT.[5] In effect, when an RST is replaced by a VAT, two things usually happen. First, taxes are removed from intermediate products, and, second, the revenue thus lost is made up by expanding the tax base to include a wide range of services that for the most part were not subject to tax under the RST. The effect of substituting a VAT for an RST, so far as most citizens are concerned, is thus a considerable expansion in the range of consumption subject to taxes, and since in Canada (as in the United States) the strong RST tradition of explicitly adding sales taxes at the retail level prevails, there is no way to hide this outcome.[6] The political effects of this shift are obvious. When the federal government finally moved to a VAT, thus revealing to the public the extent of its previously hidden manufacturers' sales tax, the party in power was destroyed in the next election On the whole, however, the QST and GST as they

Note:

Kuo, McGirr and Poddar (1988), for example, estimated that from one-third to one-half of provincial RST revenues came from business inputs. (A more recent study by Ring [1999] presents a comparable estimate of 40 percent for state RSTs in the United States).

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now exist constitute an operational "dual" or "concurrent" VAT system—with essentially none of the problems usually associated with such systems. The rates of the two taxes are set quite independently by the respective governments. The tax bases are also determined independently, although they are essentially the same. From the beginning, both taxes have been collected in Quebec by the Ministere du Revenue du Quebec (MRQ), with the GST being applied in accordance with the rules defined by the federal government. The federal share is turned over to the federal government after deducting an agreed administrative cost. (The details of these agreements are not public knowledge.) No problems have arisen from such intergovernmental collection arrangements, which are quite common in Canada (although the revenue flow has invariably been the other way in the past, that is, from the federal to the provincial governments). However, this arrangement in Indian context has become the bone of contention, with states claiming that the center has not been honoring its commitment to meet disburse their share. These thoughts are lead by the opposition ruled states.

In Canada however, taxes on interprovincial sales from one business to another are basically handled by a deferred-payment system similar to that now applied in the EU. Exports from Quebec, whether to another province or another country, are zero-rated for QST (although subject to GST). Imports into the province from other provinces, or from abroad, are taxable, but the tax is assessed on inter-provincial imports only when there is a sale by a registered trader to an unregistered trader or consumer in the province. Although, as in the EU, special regimes apply to automobiles and a few other cases (Canada 1996), in general no attempt is made to collect tax on inter-provincial purchases made directly by final consumers.[7]

The main difference between the GST-QST system and that now applied in the EU is the existence of the overriding federal GST as an enforcement mechanism. Audit priorities for the GST are of course established by the federal government, but a final audit plan is agreed with the Quebec government, with the latter actually carrying out the audit and reporting the results to the Canada Customs and Revenue Agency (CCRA). Obviously, since the QST is applied to a GST-inclusive base, Quebec has some direct incentive to monitor the GST as well as the QST. On the other hand, although Quebec cannot directly monitor the other end of inter-provincial sales, the normal process of GST audit (carried out inter-provincially by CCRA) serves as a cross-check to ensure that QST has not been evaded. In effect, the existence of a federal sales tax on a more or less uniform

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base provides some control over inter-jurisdictional sales for purposes of both provincial and federal taxes. Reportedly, the system is working quite well at the technical level, despite the well-known political differences between the governments in Quebec and Ottawa.

GST THE SAVIOUR

Considering the large acceptance of GST and more importantly, the growing share of Services in GDP of the nation the earlier laws need to be amended where service had been kept out of purview of state and still continue to do so. Service tax has been a new concept in India and is fast assuming greater importance with every passing year as service industry continues to grow at an astounding rate. The following excerpt from Economic Survey 2010-11 proves the growing importance of services.

"*With growth reverting to pre-crisis levels in the current fiscal, revenues remaining buoyant, and a much higher than budgeted realization in nontax revenues arising from telecom 3G/ BWA (third generation/broadband wireless access) auctions, there was headroom for higher levels of expenditure at the given fiscal deficit targets.*" [8]

Since its introduction in 1994-95, service tax has helped widen the tax base of indirect taxes. There has been an increase in the number of services over the years). The Budget for 2010-11 announced the following measures: **(a)** Rate of service tax was retained at **10 per cent** (which had earlier been reduced from 12 per cent in February 2009 as part of the fiscal stimulus package).

(b) Eight new services were brought under the service tax net:

(i) Services of promoting, marketing, or organizing of games of chance, including lottery.

(ii) Health services, namely health check up undertaken by hospitals or medical establishments for the employees of business entities and health services provided under health insurance schemes offered by insurance companies.(The tax on these health services would be payable only to the extent payment for such medical checkup or preventive care or treatment, etc. is made directly by the business entity or the insurance company to the hospital or medical establishment);

(iii) Services provided for maintenance of medical records of employees of a business entity;

(iv) Services of promoting of a 'brand' of goods, services, events, business entity, etc.;

(v) Services of permitting commercial use or exploitation of any event organized by a person or organization;

(vi) Services provided by electricity exchanges;

(vii) Services related to two types of copyrights hitherto not covered under existing taxable service 'Intellectual Property Right (IPR)', namely those on

(a) cinematographic films; and

(b) sound recording;

(viii) Special services provided by a builder, etc. to prospective buyers such as providing preferential location or external or internal development of complexes on extra charges.

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Table : Service Tax-A Growing Revenue Source [9]

	No. of Services*	Tax Rate in per Cent	Revenue (` crore)	Growth in per cent over Previous Year**
2004-05	75	10	14200	80.0
2005-06	78	10	23055	62.4
2006-07	93	12	37598	63.1
2007-08	100	12	51301	36.4
2008-09	106	12***		18.8
2009-10(P)	109	10	58454	-4.1
2010-11 (April-December)	117	10	44081	19.2

Source : Receipts Budget and Controller General of Accounts.

[9] . Economic Survey 2010-11 Govt. of India Page 52.

* Based on new entries added each year.

** Growth for 2010-11 (April-December) is over corresponding period previous year.

*** Reduced to 10 per cent w.e.f. 24-2-2009. P : Provisional actuals (unaudited)

FEATURES OF THE PROPOSED GST

The Key features of GST are multiple Statutes - **one for CGST and SGST statute for every State** where uniformity in the basic features of law enacted would overcome the present diversity in the law operating in different states. Chargeability would be same; definition of taxable event would also be same as would taxable person as defined in law and measure of levy including valuation provisions. Last but not the least the basis of classification etc. HSN would also be same. This would make the law simple for business operating at interstate level.

Administration of GST would be dual in nature with concurrent jurisdiction by Centre and States. Collection procedures for CGST & SGST would be identical and common Return for CGST & SGST that would allow business to file one single return and no fear of having omitted or overlooked statutes of the law of the land. Threshold exemption limits on the proposed GST is likely to be as follows: [10]

For **CGST** – Rs. 1.5 Cr for Goods and Rs. 10 Lakh services

- For SGST - Service tax & VAT limits - Rs. 10 Lakh .
- Proposed Compounding scheme 0.5% for Turnover < Rs. 50 Lakh .

GST would have PAN based GST number – 13-15 digit number while the industrial incentives to be refunded once cash is available under GST system. The special industrial area schemes to continue up to legitimate expiry; however no new schemes would be approved henceforth. Harmonization would be required to balance of fiscal autonomy to Centre & State under GST. All refund would be in time bound manner with provision for advance ruling and dispute resolution. There would be common base for chargeability of CGST & SGST where CGST & SGST to be paid to respective Governments. The system of collection through challans would remain to facilitate uniform collection & returns.

Turnover reported under CGST & SGST by business should be same as there is harmonization between the two. GST being both manufacturer's and retailer's tax it would be levied from production to consumption. There would be no Cascading of Central and State Taxes as most of Indirect Taxes Subsumed under GST except a few ones which are listed.

Business would report the mode of purchase which could be either import/ Intra-State/Inter State also for sale which could be either export/ Intra-State/ Inter State.

Both export import under GST would also under go some transformation. GST on Imports as destination based principle which means deemed nature would continue to exist. Exports & SEZ (processing Zone) would be zero rated except supply to DTA.

For Intra –state: Both CGST & SGST chargeable on common base while for inter-state: Integrated GST comprising of both CGST & SGST chargeable on Common base.

Input tax Credit of CGST & SGST allowed separately however no cross utilization of CGST & SGST allowed. Input tax credit of IGST allowed and cross utilization permissible among IGST, CGST and SGST.

The **IGST** will call for call for several statutes some of which are:

- Appropriate provision for consignment sale/stock transfer
- Inter-state dealer will pay IGST after adjusting IGST, CGST and SGST credit on purchase
- The seller in State X will pay the IGST to the Centre
- While paying IGST, seller will adjust his lying IGST/CGST/SGST credit
- State X will have to transfer the credit of SGST used by the seller for payment of IGST to the Centre
- Buyer in State Y can avail credit of IGST
- Buyer in State Y can use the IGST to discharge his output tax liability
- Centre has to transfer credit of IGST used for payment of SGST to State Y
- A clearing house has to be formed for facilitating IGST
- CGST against CGST
- SGST against SGST
- No Cross sectoral set-off between CGST & SGST
- IGST for CGST/SGST & vice versa
- Lower rate for necessary items and goods of basic importance
- Standard rates for goods in general
- Special rates for precious metals
- Tax exemption would be converted into cash refund scheme after initial payment
- Schemes to continue up to notified expiry
- No new exemption in future
- Interest of small traders and SSI to

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be protected
- Upper ceiling on gross annual turnover and a floor tax rate to be prescribed
- Compounding cut off at Rs. 50 lakhs with a floor rate of 0.5% across the States
- Rs. 10 lakhs limit for goods and services across all States / UT for SGST
- Rs. 1.5 crore for SSI manufacturers on CGST
- CGST exemption limit on services to be increased (presently at Rs. 10 lakhs)

CONSTITUTIONAL AMENDMENTS

- Entry 84 of Union List to amend to empower Centre to levy tax on SALE of goods.
- Entry 54 of State List to amend to empower State to levy tax on SERVICES.
- Entry 92A of Union List to amend to empower Centre to levy tax on inter – state SERVICES.
- Article 286 to amend to empower State to levy tax on imports.
- 3/4th majority in Parliament & 50% collegiums of State Assembly ratification.

Bottlenecks in GST

- Transitional credit
- High sea sales
- Stock transfers
- FOC clearances
- Additional considerations

INDIAN ADAPTATION OF GST

As the basic relation between states and center is involved and needs to be amended, the government as constituted a Empowered committee of State Finance Ministers, involving all state level finance ministers. The Empowered Committee of State Finance Ministers has recommended that there should be a compounding/ composition rate of tax for the small taxpayers turnover not exceeding Rs. 50 lakhs. Since, by the introduction of the GST, it is expected that it will broaden the tax base and many dealers which hitherto not within the tax net, would come, therefore, to make the taxation simpler for them, such a scheme envisages.

This committee is taking care to ensure while the benefits of GST and its laws accrue to all no injustice is done to any section of taxpayers. The above suggestion from the committee is one such example. They have envisaged the trouble the GST may cause to the small taxpayer and hence given the above suggestion which will ensure that the small taxpayer is not unnecessarily harassed. The committee came to a breakthrough on 6th December the second day of its meeting. The following extract from 'The Indian Express' shows the progress made and the miles it is yet to go. Goods and Services Tax (GST), India's most important economic reform, is set to become reality soon after state governments accepted most of the major changes proposed in its design suggested by a panel formed by former Union finance minister P. Chidambaram. On the second day of a meeting of the Empowered Committee of state finance ministers here, the state governments accepted the changes in GST design and formed three sub-committees that would sort out revenue neutral tax rate, dual control of traders and integrated GST.

A major hurdle was removed after state

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governments agreed to a compensation of Rs 34,000 crore for phasing out Central Sales Tax (CST).

The three sub-committees, the first will look into the issue of revenue-neutral tax rate and place of supply rules. The second would look into dual control of traders.

"The Empowered Committee is of the opinion that small traders and dealers should not be under dual control of state and Centre. A threshold limit has to be decided,"

The third panel would examine the issue of an integrated GST on inter-state trade and how imports are taxed under GST. The biggest hurdle in the path of the Constitutional Amendment Bill — Article 279(B) which had the clause of Dispute Settlement Authority — has been now cleared after Centre agreed to delete the clause. In addition, states have been granted freedom to choose the timing of their entry into GST. The Centre also agreed that states will be allowed to levy a floor rate with a narrow band. States will also be given power to raise additional resources during a natural calamity or disaster, and goods like petroleum products will be brought under the ambit of GST.

KEY CONSENSUS AREAS

* States agree to a compensation of Rs 34,000 crore for phasing out Central Sales Tax
* The Empowered Committee has set up three sub-committees to iron out implementation issues
* The issues are: a revenue-neutral tax rate, dual control of traders by state and Centre, and integrated GST on inter-state trade
* Centre has agreed to delete the clause on Dispute Settlement Authority from the Amendment Bill
* States have been given freedom to choose timing of entry into GST regime"[11].

Thus the GST is well on its way, and the target of being implemented in India and the following benefits listed by CII becoming a reality.

- Higher economic growth.
- Simplification of administration and improvement in compliance.
- More secure and stable base for Centre and State revenues.
- More capital investment through elimination of tax cascading.
- Free flow of goods and services within the common market in India.
- Promotion of manufacturing in India.
- Removing trade biases against Indian manufactured goods" .[12]

CONCLUDING REMARKS

The puzzle of high inflation and rising interest can easily be traced to fiscal deficit imposed on the country year after year by the various governments in the name of populist approach. It is time to control this fiscal deficit, which can only come about through proper taxation system. The ambit of tax needs to be increased and has already taken services in its fold. It further needs to usher in the era of GST which will take the country to an era of development beyond the imagination of visionaries and planning commissions.

It is time to take bold measures and with a strong government at the center we can hope that the GST will not only get implemented but will retain the necessary

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features too. This will be a major step towards development of the nation. The first major step towards growth and development is the challenge of implantation of a proven cause. There are several ways forward, implementing GST would be one such way for a nation suffering from the dual evil of slow growth and high inflation. Undoubtedly, there are shortcomings in the GST as already pointed out, also there are hurdles as and barriers too. But none too such that it to prevent the implementation of the taxation system which has been deferred time and again to the pain and anguish of those who understand the subject.

Thus GST is now a need that is overdue. Any further delay or change will defeat the purpose for which it is being implemented. Already there is a need for integrated approach to taxation. This will increase the viability of companies and will improve our GDP giving ample opportunities of employment and remove poverty. It is important for the development and growth of our country.

REFERENCES

1. [1]Datey V.S., (2011). 'Indirect Taxes' Taxmann 26th Edition,New Delhi.
2. [2]Business Standard, February 21, (2005) "The Devil is in the Details" Sukumar Mukhopadhyay.
3. [3]Bihar VAT A Simplified Version by B.N.Pandey & Arun K. Mishra 1st Ed 2007 Pahuja Law House.
4. [4]First discussion paper on GST pulished in Economic Survey 2009-10
5. [5]Kuo, McGirr and Poddar (1988), for example, estimated that from one-third to one-half of provincial RST revenues came from business inputs. (A more recent study by Ring [1999] presents a comparable estimate of 40 percent for state RSTs in the United States.)
6. [6]Business Standard Kolkata Edition 17-02-11 Page 4
7. [7]Canadian provinces have traditionally not worried too much about this problem since geography ensures that most major population centres are not close to borders with other provinces. The major exception is in the capital region (Ottawa-Hull) on the Ontario-Quebec border, so it is probably not a coincidence that the sales tax rates in these provinces have always been close. At present, the rates are 8 percent for the RST in Ontario, and 7.5 percent (on the GST-inclusive base) for the QST in Quebec. As elsewhere, the advent of electronic commerce is likely to lead to more concern with this issue in the future (McLure 1997).
8. [8]Economic Survey 2010-11 Chapter 3 Page 42
9. [9]Economic Survey 2010-11 Govt. of India Page 52.
10. [10]Goods and Services Tax (GST) Bimal Jain.
11. [11]Mohanty, Debabrata, The Indian Express, December 7, 2012 P. 1
12. [12]CII presentation to ECSFM on 28 November 2011.

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DOMAIN NAME, INTERNET AND TRADEMARK: ISSUES

R. K. SINGH

Research Scholar
(Cyber Security Threats, Law- Strategy)
Chankya National Law University, Patna

Email : *rba.indian@gmail.com*

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Abstract

Às the internet has become more important to success in business, many businesses have acquired an online presence in the form of a website. These businesses often use their trademarked names as their website easily. Consumers navigates the internet through the use of words, either by typing domain names into internet browsers or by typing words in to a search engine that assists in locating the information they are seeking.

With the increment of electronic world trademark and domain name law is designed to prevent consumer confusion. In many ways, trademark and domain name law has evolved much faster and earlier to the digital environment as a result of the menace of cyber squatting with the new digital technologies like linking, framing and Meta Tag.

Regarding Meta tags, the question of whether the Meta tag in the HTML of a website can infringe on existing trademark was addressed by the court. Framing also involves issues relating to misuse of a trademark, primarily because framing creates confusion in the mind of the user as to the origin of the contents placed on the website. There is possibly of a stranger case of copyright infringement in the case of framing as compared to linking. The threat of trademark and copyright infringement posed by linking and framing has not yet been addressed by Indian courts.

This paper examines issues related to domain name, trademark law with national and international scenario and evaluates how the same have evolved in the internet age. Apart from this also examines confliction between domain name and trademark with linking, framing and Meta tag.

Key Words : Trademark, Domain Name, Squatting, Meta Tag, Copyright Infringement, Linking, Framing.

Pages:11 References: 27

INTRODUCTION

The emergence of the internet and domain names has resulted in an explosion of litigation, with the courts struggling to apply old law, as well as recently enacted legislation, to this relatively new medium of communication and commerce. The majority of trademark and passing of liti-

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gation involving domain names has focused on Cyber Squatting. Over the last decade, the crime of cyber squatting has significantly risen. Neither the term 'domain name' nor the offences of 'cyber squatting' have been defined in the Trade Marks Act 1999. Instead, domain name disputes are dealt with under the common law theory of 'passing off'.

The courts of India apply the principle of passing off action while deciding domain name dispute case. This is essentially because, like in the case of an action for passing off, a suit instituted for a dispute regarding domain name is an action for deceit; refraining the other person from utilizing the trade mark of the registrant as a domain name. In many ways, trademark law has evolved much faster and earlier to the digital environment as a result of the menace of cyber squatting. Over the past ten years, Indian courts have adjudicated a plethora of cases arising mainly where an infringer registered the domain name of a well known trademark with the view of extorting money from the trademark owner. Therefore, Indian law has kept pace with international developments. However the law has to evolve much further in order to address the trademark infringement issues posed by Meta tags, linking, framing and new issues which will arrive as the internet continues to evolve.

UNDERSTANDING THE DOMAIN NAMES AND TRADEMARKS

A trademark is a badge of origin, a **domain name** is an electronic address . A domain name is a user-friendly text representation of computer readable binary numbers; it identifies the electronic address of an e-merchant much the same as a postal address or a telephone number on the global network. The technological function of a domain name is very simple. It is no more than a label for an IP address. When an Internet users enters a domain name into a software application, such as a browser programme or an FTP client, the software sends that name to one of a number of Domain Name Server (DNS) computers. The DNS searches in its database for an IP address matches the domain name, and then returns the IP address to the requesting software application. Once the software has received the IP address, it can be used to communicate with the server to which the domain name refers. This is the reason why a domain name lookup must return only one result; if it returned more than one IP address, it would be uncertain which serer was to be contracted.

Domain name normally allocated by a process of a simple registration with the appropriate register and payment of the required fee. The server owner devises an appropriate domain name and then checks with an online database, operated by one of the registers, to see if the name has already been taken. If the name is not only registered, it can be normally be assigned to the sere owner immediately. This 'first come, first served' process of allocating domain names has been held valid by the courts of several jurisdictions.

A **trade mark** is a sign, or combination of signs, which is used to distinguish the goods or services of one undertaking from those of another undertaking. Section 2(zb) of the Trademarks Act, 1999 defines a trademark as a 'mark capable of being represented graphically and which

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is capable of distinguishing the goods and services of one person from those others'. Businesses recognition for their brands and thus they have a strong interest in preventing anyone else from using their trademarks.

The "more important part" of the definition is the requirement that the mark identify and distinguish the user's goods from the goods of others. The ability of a mark to identify and distinguish goods-its "distinctiveness"- varies with the mark. Four levels of distinctiveness have been recognized: (1) generic terms, such as "thermos"' or "aspirin," which are simply products, and do not distinguish one brand from another or identify the source of the good; (2) descriptive marks, such as "raisin bran," which merely describe the products and can only identify the products after the public comes to associate the product with a particular producer;' (3) suggestive marks, such as "Coppertone" or "Slimfast," which suggest the purpose of the product and serve to indicate its source; and (4) arbitrary or fanciful marks, such as "Snapple" or "Kodak," which have little or no relationship to the product.

Protection of Trade name against its use by another as a domain name requires proof of false of misleading conduit on the part of the domain name holder, and thus provides no remedy against innocent, non-confusing use. A claim for trade mark infringement must demonstrate that the domain name has been used in the course of trade in relation to goods or services falling within the trademark's registered classification. More expensive protection of domain names, and trade names generally, would immediately create a conflict with the fundamental principle of freedom of speech, the best known example of which is possibly the First Amendment to the US Constitution. Indeed, this conflict has already come before the US courts. The Georgia Computer System Protection Act 1991 purported to create new criminal offence of transmitting data which uses a name, trade name,, logo, etc falsely to identify the transmitter , or which falsely starts of implies that the transmitter has permission or is authorised to use the name, etc. It would thus have criminalised many previously permissible domain names. In June 1997 the Georgia Computer System Protection Act was held void as unconstitutional in ACLU of Georgia V Miller.

It seems likely that the conflict between the domain name system and the legal protection of trade mark and trade names will be unable to be resolved by legislation.

Can The Conflict Between Domain Name And Trade Mark Be Resolved?

The conflict between domain name and trade mark system is irreconcilable where both parties act i good faith. Even of trade mark holders were to be given priority, it is impossible to match a unique domain name to the theoretically possible 42 x (number of trade mark jurisdictions) holder of the same mark. However, although conflict cannot be resolved it seems that the current approaches being adopted by domain name registries, the courts and international organizations such as WIPO will ameliorate its effects. Infringing uses of domain names registered subsequent to trade marks will be resolved primarily at the domain name registry level, the courts are rapidly devel-

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oping techniques for dealing with cyber squatting, and arbitration and mediation are likely to assist conflicting legitimate users of trade names to reach an accommodation with each others.

REGISTRATION OF DOMAIN NAMES IN INDIA

The registration of Domain Name in India is carried out through the following organization. The National Exchange of India (NIXI) created the INRegistry, an autonomous body with the primary responsibility for maintaining the .IN Country Code Top-Level Domains (.IN ccTLD) and ensuring its operational stability, reliability, and security.

In 2005, the INRegistry formulated the .IN Domain Name Dispute Resolution Policy (INDRP). The INDRP was formulated on the lines of the Uniform Domain Name Dispute Resolution Policy approved by the Internet Corporation of Assigned Names and Numbers (ICANN) in 1999.

Registration Of Domain Names Under ICANN

The ICANN is responsible for the management of the internet domain name system. The ICANN approved the Uniform Domain Name Dispute Resolution Policy (UDRP) on October 24, 1999 which lays down the mandatory procedure for dispute resolution. The UDRP provides a mechanism for trademark owners to obtain names that have been frequently registered by cyber squatters.

All registered ownership of .com, net and org domain names (the 'Registrant') are subject to the UDRP by virtue of (i) the registration agreements agreed with their registrars at the time of acquiring their domain names, or (ii) applying to ICANN to maintain or renew a domain name registration.

RESOLUTION THROUGH THE COURTS RELATED TO DOMAIN NAME AND TRADE MARK

More difficult is the name resolution of a new phenomenon which has arisen from the Internet's domain system – the prospective registration of domain names which might be wanted by commercial enterprises, with a view to selling the registration to those enterprises at a substantial profit. This activity has been described as 'domain name piracy', 'cyberpiracy' and 'cybersquatting'.

The problem with cybersquatting is that the domain name holder has not actually used the domain name in respect of the trade mark holder's goods or services; in other words, he has committed no direct act which infringes the trade mark. This has not prevented the courts form proving a remedy to the trademark holder on various grounds, including trade mark dilution. Passing off and unfair competition.

In the UK, the cybersquatting issue came before the English court of appeal in Marks & spencer plc and others v One In A Million Ltd.The fact were very similar to the Panavision case , as the defendants had registered numerous trademarks of British companies as domain names, including marksandspencer (both .com and .co.uk), bt.org, britishtelecom.co.uk and virgin.org, and had offered to sell them to the plaintiffs'. Again, there was no directly infringe use of the marks in relation to

the plaintiffs' goods or services. Here, the courts decided in favour of the plaintiff on the basis of the defendants' passing off;

- Because any future use of a domain name which was similar or identical to household names such as those of the plaintiffs would inevitably amount to passing off, the plaintiffs were entitled to injunction against such activity if there was evidence that it might take place; and
- The defendants had made explicit threats to sell the domain names to 'any other interested party', and this was held to constitute implicit threats to use the domain names to pass off another's goods and services.

INDIAN CASE LAW ON CYBER SQUATTING

while dealing with cases on domain disputes, the various High Courts in the India and the Supremcourt of India have tried to parallels between an action for cyber squatting and the common law action of 'passing off'. The courts have held that a domain name reflect the identity of the owner of the mark and carries with it a reputation. The courts equated a domain name with a registered trade mark and, if it was found that the domain name was registered only to take advantage of a reputed mark, it was treated as a passing off action.

One major passing off judgment was delivered by the Delhi High Court in 2002. In Eicher Limted and Anr. V. Web Link India and Anr, apart for the word 'EICHER' being used as a trademark on the products, the owner of the mark (Plaintiff) also registered the domain name 'eichertrctors.com'. The domain name 'eichertractors.com' was illegally and unlawfully registered by a third party in their own name without any authorization, permission or license.

The Delhi High Court held that the settle position on law that a domain name is of vast importance and is a valuable asset. It is more than an internet address and is entitled to equal protection as a trade mark, and passing off action is maintainable against a provider of service through internet who infringes upon the rights of another services provider. The domain name 'eichertractors.com' as registered by the party, on being used by customers, was bound to create confusion as it would take the users to a website which has nothing to do with the owner of the trademark. Confusion was bound to arise in the minds of the users and therefore a suit for passing off was maintainable.

In some cases the Supreme court of India held that 'the original role of a domain name was no doubt to provide an address for computers on the internet. But the internet has developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for internet communication but also identifies the specific intent site.

Indian Trademark Law

A Comparison with EU and U.S. Laws Indian trademark law, like U.S. trademark law but unlike most European trademark laws (and Community trademark law), is based on a "first to use" system. Although

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the principle was codified for the first time in the Trade Marks Act 1999, a number of earlier judicial decisions gave the term "first to use" a wide interpretation. Unlike in the United States, first use anywhere in the world accompanied by a transborder reputation of the mark in India is the determinant for ownership of trademark rights in India.

For example, Playboy, whose own magazines are banned in India, relied on global advertisements to claim that the mark PLAYBOY had goodwill and reputation in India. This is in stark contrast to the position in the EU, where an action for passing off or unfair competition typically requires an established goodwill among actual customers of the relevant product or service in the respective country, and the position in the United States, where generally use of a mark in commerce in the United States or in commerce between a foreign country and the United States is necessary to establish rights in the mark.
Trademark rights in India can also be acquired through registration. A trademark may be registered, even if use of it has not commenced, on a "proposed to be used" basis. The mark may remain unused, but still protected, for a maximum period of five years after it is entered onto the register. At the end of this five-year period, it will become liable for rectification (cancellation). However, rectification can occur only at the instigation of a third party; registered trademark owners are not required to periodically prove that their marks are in use in order to maintain their registrations. This is the same as in the EU, but different from the position in the United States, where, except as noted below, a registration based on use can be obtained only after a mark is used in U.S. interstate commerce or in commerce between a foreign country and the United States. Foreign treaty applicants may base a U.S. registration on their foreign registration without demonstrating use in the United States, with the effect that registration will be cancelled automatically after five years if use is not shown.

But the position in the EU and India also differs in one important respect. In India, cancellation actions often fail, even before any assessment of actual use of the challenged mark is carried out, on account of the lack of a bona fide intent of the third party bringing the action. A 2008 judgment of the Intellectual Property Appellate Board (IPAB) in Kanishk Gupta v. Liberty Footwear discussed how removal of a mark on grounds of non-use is discretionary. The IPAB went on to rule that the blatant adoption by a third party of a mark that is deceptively similar to an invented mark on the register disentitles that party to seek its removal. In other words, a mark consisting of an invented word cannot form the subject matter of a cancellation application, especially when the party seeking cancellation has adopted a similar mark with the intention to deceive.

OTHER EMERGING ISSUES IN TRADEMARK LAW

Linking:

"**Linking**" has been called the concept upon which the Internet is based. "The power of the Web stems from the ability of a link to point to any document, regardless of its status or physical location." Linking was purposefully built into the software language spoken throughout the Internet, called hypertext markup lan-

guage or "**HTML**" It allows jumping from one page to another page of a particular Web site, or from any page of any Web site to any other page of any other Web site, and makes "**surfing the 'Net**" possible.To understand how linking can be considered to be an act of unfair competition in some instances, one needs to realize the commercial realities of the Internet. Typically, one Web site contracts with another Web site to display an advertisement. Much like a billboard, the cost of renting this space directly relates to the "landlord's" Internet location. Web sites which are often viewed, or "hit," are considered prime real estate, and are relatively costly sites at which to advertise. Most Web sites offer a number of pages of data. The "homepage" is where most viewers enter a site, and it is on this page that the majority of advertising occurs.

The complaints about linking are not linking per se, but rather about links that circumvent another's homepage or the advertising portion thereof. Such links result in the advertisements of the sponsor Web site not being viewed, and the value inherent to that Web site to advertisers is therefore reduced. In essence, the Web site which has established the link benefits because viewers find its value enhanced (i.e., additional relevant access), but this is done at the expense of the linked site.

It is only this year that linking has been charged as an unfair trade practice. In April of 1997, Ticketmaster Corp. v. Microsoft Corp. was filed. In its complaint, Ticketmaster alleged that Microsoft's link to its site violates federal anti-dilution and trademark infringement law. At the core of the complaint is Microsoft's link to Ticketmaster's live event and ticketing data bases. Microsoft's on-line guide to Seattle, called "Seattle Sidewalk," provides information about current events in the area. Viewers benefit from the listings Ticketmaster has compiled, but bypass Ticketmaster's homepage, and hence its advertisers, by linking directly to the event listings.

Microsoft's answer to the complaint has been that "any business participating in the Internet invites other participants to use the business' Internet addresses and URLs to contact it". Absent a settlement, the court will decide whether this "implied license to link" argument will prevail.

How the court rules could have far-reaching consequences since it is common to link to other's pages that contain related information. On the one hand, prohibiting such links, or limiting them to linking only to homepages, could significantly slow the ability for Web "surfers" to locate wanted information. The Internet is now bogged down by traffic, and forcing viewers to sift through unwanted pages is likely to ruffle more than a few feathers.

Framing:

"Framing" is a special form of linking. The viewer is linked to the information of another site, but the advertisements present on the parent site continue to surround, or "frame" the linked page. As such, advertisers have access to the visitor not only through the homepage of the parent Web site, but on every page or site the visitor subsequently views.

One can frame a complete Web site. In so doing, the framer provides no content itself, but rather uses the content of another's Web site, and sells the advertis-

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ing space on the surrounding borders. With framing, there is no way to tell if the content is appropriately attributed to the framing site, or to someone else. Framing can be thought of as removing the label from another's goods, and replacing it with the framers's label. The consumer has no way of knowing that it is someone else who is responsible for the quality of the product.

There have been, so far, few legal challenges with regard to framing, but those that have been brought have received intense legal analysis. Commentators tend to simultaneously address, and sometimes confuse, the framing and linking issues. Some defendants have turned to the "implied license to link" defense to gather sympathy and justify framing.

Seemingly the first framing lawsuit, Washington Post Co. v. TotalNews, Inc., was filed in New York federal court in February of 1997. A settlement was reached prior to the defendant's answer. The defendant news service, TotalNews, was alleged to have violated both copyright and trademark law. The plaintiffs, including The Washington Post, CNN, Time, Reuters, Dow Jones and The Los Angeles Times asserted that TotalNews' practice of framing their Web sites misappropriated their copyrighted material and infringed their trademarks.

Apparently, TotalNews provided no content or value of its own. The Web site merely linked to numerous other well-known news sites. At all times, the visitor saw only the Internet address of TotalNews, no matter which Web site appeared. Advertisements framing the linked sites were sold by TotalNews, and were under TotalNews' complete control.

In the settlement, TotalNews agreed to permanently refrain from either directly or indirectly causing any of the plaintiffs' Web sites to appear on a user's computer screen with any material associated with the defendant or any third party. Since reaching the settlement, TotalNews has negotiated a link license with some of the plaintiffs.

By reaching a settlement, interesting trademark questions were not reached. It is likely, however, that the court would have agreed that violations of both copyright and trademark law had occurred.

Meta-Tags:

A meta-tag is a software parameter of HTML, in which Web pages are written. Through use of meta-tags, a Web site creator can describe what is available at that particular site. This description is relied upon by Internet search engines, such as Yahoo or Infoseek, to match the Web site to the search query. Absent a meta-tag, coders for a particular search engine must either read, and manually enter the Web site content (rarely done now), or use an automated (or robot) system to scan a certain amount of text (usually the first 200 characters). By the words or phrases present in this scanned test the site is characterized.

A meta-tag is not necessary for normal operation of a Web site, but it is an accessory more Web page creators are including during design. Although it can be used to list the author, or make a claim of copyright, it is most often utilized to specify "keywords" matched during the search.

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While the descriptive meta-tags will appear in the generated search engine report, keyword meta-tags will not.

As mentioned above, Internet advertising is geared toward the number of "hits" or times a certain Web site is accessed. Sites visited frequently can simply command higher advertising fees. Because a site will be visited more frequently the more often it is uncovered during a computer search, there exists a strong commercial incentive for a site to employ meta-tags and develop extensive keyword lists. Moreover, there are no limits to the number of keywords a meta-tag might contain. Theoretically, a site developer could list every word in the English language, and thereby increases the site's hit rate.

Not surprisingly, there are those who have used meta-tags to compete unfairly. Meta-tags have been employed to improperly list the names of specific well-known businesses, including direct competitors of those actually offering the sites, to increase the chances that their site will be viewed. Searchers are eventually directed to a site that has nothing to do with the intended subject of the search. The unscrupulous site operator then capitalizes on the opportunity by offering the visitor competing goods or services.

For instance, a contemporary search under the terms "Disney" or "Mickey Mouse" will turn up travel agencies offering package deals to the Disney resorts. While Disney has apparently not yet mounted a legal challenge, some other wronged businesses have been more aggressive. One meta-tags suit, Insituform Technologies, Inc. v. Nat'l Envirotech Group, brought in Louisiana federal court, settled in August of 1997. Soon after being challenged, the defendant agreed to delete all reference to the plaintiff at its Web site.

It is likely the plaintiff in Insituform would have prevailed. First, both firms were direct competitors in the business of pipeline-reconstruction. Second, the defendant not only included the plaintiff's name in its meta-tag, but also allegedly decorated its Web site with slogans and illustrations copied directly from the plaintiff. Thus, in addition to a "hidden" meta-tag, there was visible evidence of infringement.

An important ruling regarding the use of meta-tag recently came down from a California federal district court in Playboy Enterprises, Inc. v. Calvin Designer Label. As in Insituform, the alleged misconduct was not limited to an offending keyword in the defendant's meta-tag. By the preliminary injunction, the alleged infringer, an adult-oriented service, was ordered to remove all references to "Playboy" and "Playmate" from its Web site, including use of those famous marks as meta-tags.

There are, however, legitimate uses of meta-tags. They represent an important means by which today's automated search engines find and classify Web sites. But listing a competitor or even a non-competitor as a keyword in the meta-tag for a Web site can expose a company to an infringement suit.

CONCLUSION

The phenomenon of the Internet has generated many challenging trademark issues. One of the early questions addressed and now seemingly settled by

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the courts is who (as between a first trademark user and a first domain name user) should own the rights to a particular domain name. Most, if not all, are now familiar with this controversy, initiated by businesses discovering that others had usurped their trademark as a domain name, and were holding them for ransom. Famous trademarks could garner the savvy "cybersquatters" thousands of dollars. This extortion led to numerous lawsuits, premised on claims of trademark dilution and infringement. The courts have been in almost universal agreement that a domain name identical to another's federally registered trademark is infringing, and have enjoined such misappropriations. These decisions made it clear that the most important thing that could be done to protect one's trademark on the Internet is to have a federal trademark or service mark registration.

While considering the interplay of trademark law and domain name registration, it is important to bear in mind that trademark rights are not global, but regional, while the Internet is everywhere. Civil law countries, unlike the United States, do not require use of a mark in commerce as a prerequisite to registration. Many countries do not recognize the concept of common law rights. Moreover, there are many companies which share the same word or words as a trademark or service mark.

In many ways trademark law has evolved much faster and earlier to the digital environment as a result of the menace of cyber squatting. Over the past ten years, Indian courts have adjudicated a plethora of cases arising mainly where an infringer registered the domain name of a well-known trademark with the view of extorting money from the trademark owner. Therefore, Indian law has kept pace with international developments. However the court has to evolve much further in order to address the trademark infringement issue posed by domain name explosion, multidimensional infringement, framing, linking, metatag, and new issues which will arrive as the intent continues to evolve.

REFERENCES

1. N. Surya Senthil & S. LaksmiDevi: Manual of Cyber law-including the latest IT Amendment Act- 2008, Aditya Book Company, Chennai-2010, P.111.

2. Aparna Viswanathan: Cyber Law – Indian & International perspective- 2012, LexisNexis-ButterWorths Wadhwa, Nagpur, P. 262

3. HASAN A. DEVECI: Domain Names: Has Trade Mark Law Strayed From Its Path?, *International Journal of Law and Information Technology,* Vol. 11 No. 3, Oxford University Press 2003.

4. Though often confused with the electronic address, in fact, the domain name is only part of the Universal Resource Locator (URL). For example, in the e-mail: 'devecihsbu.ac.uk' and the URL: '*http://www.sbu.ac.uk/devecih*' only 'sbu.ac.uk' is the domain name.

5. Chris Reed: Internet Law- Second Edition-2010, Universal Law Publishing Co. New Delhi, P. 42.

6. Chris Reed: Internet Law- Second Edition-2010, Universal Law Publishing Co. New Delhi, P. 43.

7. Chris Reed: Internet Law- Second Edition-2010, Universal Law Publishing Co. New Delhi, P. 45.

8. N. Surya Senthil & S. LaksmiDevi: Manual of Cyber law-including the latest IT Amendment Act- **2008**, Aditya Book Company, Chennai-2010, P.94.

9. Qualitex Co. v. Jacobson Prods. Co, 115 S. Ct. 1300, 1303 **(1995).**

10. Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 9-10 (2nd Cir. 1976) (Friendly, J.).

11. Gayle Weiswasser: Domain Names, the Internet, and Trademarks: Infringement in Cyberspace- *Santa Clara High Technology Law Journal*- Volume 20- Issue 1- Article 8

12. Chris Reed: Internet Law- Second Edition-2010, Universal Law Publishing Co. New Delhi, P. 51.

13. *http://archive.aclu.org.court/acluga-vimiller.html.*

14. *www.nytimes.com/library/tech/00/02/cyber/articles/24domain.html .*

15. Aparna Viswanathan: Cyber Law – Indian & International perspective- 2012, LexisNexis-ButterWorths Wadhwa, Nagpur, P. 262.

16. Aparna Viswanathan: Cyber Law – Indian & International perspective- 2012, LexisNexis-ButterWorths Wadhwa, Nagpur, P. 263.

17. *www.ntia.doc.gov/ntiahome/domainnames/6_5_98ns.html .*

18. Chris Reed: Internet Law- Second Edition-2010, Universal Law Publishing Co. New Delhi, P. 63.

19. Chris Reed: Internet Law- Second Edition-2010, Universal Law Publishing Co. New Delhi, P. 63-64.

20. Aparna Viswanathan: Cyber Law – Indian & International perspective- 2012, LexisNexis-ButterWorths Wadhwa, Nagpur, P. 265 .

21. MANU/DE/0909/2002 accessed on January 25, 2012.

22. Aparna Viswanathan: Cyber Law – Indian & International perspective- 2012, LexisNexis-ButterWorths Wadhwa, Nagpur, P. 267.

23. *http://www.inta.org/INTABulletin/Pages/IndianTrademarkLawAComparisonwithEUandUSLaws.aspx .*

24. *http://www.bakerbotts.com/infocenter/publications/detail.aspx?id=69194fd0-6ad4-44f0-8c14-97363bf0dd65.*

25. Meeka Jun, Been 'Framed'?: Impostors Beware, N.Y.L.J. June 20, 1997 at 5.

26. Ann Davis, Web Weaves a Tangled Trademark Issue, W.S.J. Sept. 15, 1997 at B10.

27. *http://www.bakerbotts.com/infocenter/publications/detail.aspx?id=69194fd0-6ad4-44f0-8c14-97363bf0dd65.*

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PROTECTION OF WOMAN FROM SEXUAL VIOLENCE AND REPRODUCTION: AN INTERNATIONAL PERSPECTIVE

Dr. Ajay Kumar Singh

Assistant Professor, Deptt. of Law, K.S.Saket P.G. College, Ayodhya, Faizabad

Email : *ajayksinghlaw@gmail.com*

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Abstract

Violence against women is a manifest and incontrovertible fact in all countries, whether developed or developing, liberal or conservative. In this context, the international human' rights law and national policy can both become important tools to ensure justice and protect women's human rights. States and political movements all over the world have attempted to manipulate women's lives, sexuality and reproduction for political purposes, either in the name of population control or more recently fundamentalist revivals, as in Pakistan and some Islamic countries, women adulteresses are killed in the name of family honour .The gender biases affect judicial decisions, sometimes in crimes as heinous as rape and the murder of women for dowry. We can protect women's rights and can prevent gender violence only by ensuring substantive equality, elimination gender discrimination and removing discriminatory and archaic laws by radically reforming the legal systems in the country and attuning them to current. The People's Republic of China enforces the most brutal and most inhumane fertility control policy. In China, hundreds and thousands of women have suffered serious violations of their human rights as a result of birth control policy. Birth control in China has been compulsory since 1979. In the People's Republic of China, a woman's body is not her own. China enforces an intrusive one child per couple policy (only slightly relaxed in outlying regions) with fertility decisions. The freedom to have children, taken for granted by women in other parts of the world and upheld as human rights in various conventions, is unknown to women in China.

Key Words : Violence in the Area of Sexuality and Reproduction, The Freedom to have Children by Women, Human Rights, Women in China, States and Political, Fertility Control Policy N China, Forced Abortion and Sterilisation, International Covenant on Civil and Political Right (ICCPR).

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INTRODUCTION

Violence in the area of sexuality and reproduction has also been a cause of concern of international community. Sexual and reproductive rights have been recognized to be an emerging area of international human rights law, deserving of profound considerations

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in the context of women's human rights.[1] Historically, States and political movements all over the world have attempted to manipulate women's lives, sexuality and reproduction for political purposes, either in the name of population control or more recently fundamentalist revivals, as in Pakistan and some Islamic countries, women adulteresses are killed in the name of family honour[2] . In USA, Christian fundamentalists have aggressively intimidated doctors in an effort to deny women access to legal abortion. In many countries, women and girls are compelled to undergo virginity tests. Concerns over population size, economic development, and environmental conservation are such State interests that have given rise to State control of sexual and reproductive rights, which may even involve the gross abuse of women's rights [3].

States have also interfered with women's ability to access information regarding family planning by restriction upon women's privacy, In some African countries, governments condone involuntary female genital mutilation or circumcision-which is carried out in part to suppress female sexual desire.

The People's Republic of China enforces the most brutal and most inhumane fertility control policy. In China, hundreds and thousands of women have suffered serious violations of their human rights as a result of birth control policy. Birth control in China has been compulsory since 1979. In the People's Republic of China, a woman's body is not her own. China enforces an intrusive one child per couple policy (only slightly relaxed in outlying regions) with fertility decisions controlled by the State [4]. To defy the birth plan is an act of treachery by a crime against the State[5]. The government believes that population control is essential for China's modernization and security. The government official believes that the population can be controlled only by strict measures. The policy involves the controlling of age of marriage and the timing and number of children for each couple. Women must have official permission to bear children. Abortions are mandatory for unmarried women as well as for migrant women.

Couples who have a child "above the quota" are subject to sanctions, including imprisonment and heavy fines, their houses are destroyed, and grains are confiscated and live stock either killed or taken. Pregnant women are forcibly taken to hospital and abortion centers where doctors forcibly abort their child by injection.[6]

The implementation of the birth control policy has also resulted in the arbitrary detention and ill-treatment of relatives of those attempting to avoid abortion or sterilization. The families who give shelter to those women are penalized in the same way. State employees who violate the birth control policy may be dismissed or demoted in addition to imprisonment and fines. Psychological intimidation and harassment are also commonly used to persuade pregnant women to have an abortion. The freedom to have children, taken for granted by women in other parts of the world and upheld as human rights in various conventions, is unknown to women in China. Their right to bodily integrity, their right to form and found a family , and their freedom of conscience

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is forfeited daily.[7]

Amnesty International is concerned about the human rights violations, which result from the methods adopted by the government to enforce birth control policy, It is concerned at reports that forced abortion and Sterilsation have been carried out by or at the instigation of people action in an official capacity, such as family planning officials, against women who are detained or forcibly taken from their homes to have the operation. Amnesty International considers that in these circumstances such actions amount to torture or cruel, inhuman and degrading treatment.

International human rights norms ensure to women to make decisions in the matters of sexuality and reproduction free from violence and sex discrimination.[8] The United Nation Human Rights Committee's General Comment on the right to found a family stated that when States parties adopt family planning policies, they should be compatible with the provisions of the Covenant on Civil and Political Rights and should, in particular, not be discriminatory or compulsory.[9] The core rights issue in reproductive areas is the ability of women to have agency and make decisions that shape the course of their lives, such as determination of when to start a family, its size and the interval between children[10]. It also entails decision- making power in the Matters of choosing marital partner, services related to family planning, maternal health, treatment of HIV/AIDS and sexually transmitted diseases. Reproductive rights include the right to safe and legal abortion. Women should be able to make decisions about reproduction free of violence, coercion and discrimination.

CONCLUSIONS AND SUGGESTIONS

Violence against women is a manifest and incontrovertible fact in all countries, whether developed or developing, liberal or conservative. In this context, the international human' rights law[11] and national policy can both become important tools to ensure justice and protect women's human rights, It may be noted that the gap between reality and the practice of national and/or internationals is unfortunately very wide and women who are the victims of violence are further victimized by the poor and discriminatory enforcement of laws. The apathy of police and judicial system, and the systematic manipulation of legal provisions by lawyer in favour of offenders further deepen the agony of victims. The studies show how gender biases affect judicial decisions, sometimes in crimes as heinous as rape and the murder of women for dowry. We can protect women's rights and can prevent gender violence only by ensuring substantive equality, elimination gender discrimination and removing discriminatory and archaic laws by radically reforming the legal systems in the country and attuning them to current realities.

REFERENCES

1. The Human Rights watch global report on Women's Rights, New Delhi: Oxford University Press, 1995, p.410

2. Sonia Correa, "Population and Reproductive Rights: Feminist Perspectives from the South", New Delhi: Kali for

ISSN : 2393 - 9338

Women, 1994, p 56.

3. Supra note 1.
4. Melinda Tankard Reist, "The Sacrifiece of Sovereitgnty: China's Fertility Control Policy",in Renuka Sharma (ed.), The Other Revolution: NGO and Feminist perspectives from South Asia. Delhi: Sri Satguru publication, 1999, P. 359.
5. Ibid.
6. Ibid ,p.363.
7. Ibid, p.359.
8. Supra note 1, p.414.
9. United Nations, "Compilation of General Comments and General Recommendations Adopted by the Human Rights Treaty Bodies", *U.N. Document* HRI/GEN/1, July 29, 1994, pp.29-30
10. The International Covenant on Civil and Political Right (ICCPR) directly address the realm of reproduction in one provision. Article 23.2 of the ICCPR declares, "The right of men and women of marriageable age marry and to found a family shall be recognized". This has been further elaborated in Article 16(1) of *CEDAW*..
11. Sexual and reproductive autonomy has been reaffirmed in various United Nations sponsored conferences and conventions. It initially appeared in the 1968 Teheran Declaration, and subsequently in the Declaration on Social Progress and Development (1974), the World Population Plans of Action of Bucharest (1974), and Mexico City (1984), and the four women's conferences in Mexico City (1975), Copenhagen (1980), Nairobi (1985), and Beijing (1995).

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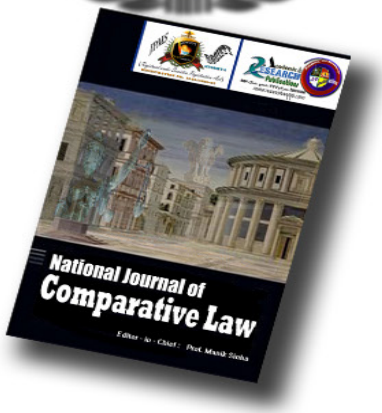

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Dr. Ram Mahohar Lohiya National Law University, Lucknow.

E-mail: *dean_academics@rmlnlu.ac.in*

Mob. No. 919792362193

Prof. Jariwala has over thirty years of teaching experience, including 26 years of postgraduate teaching. He was a Lecturer at Banaras Hindu University, Associate Professor at Indian Law Institute, New Delhi; Reader, University of Delhi; Professor, BHU; Professor, NLIU Bhopal and Emeritus Fellow of the University Grants Commission, New Delhi.

He has also held the position of Head and Dean, Faculty of Law, and Registrar of BHU. He has visited several universities in USA and UK and deeply interacted with their students and faculty. He has published over sixty articles, reviewed ten books, edited four books and authored two books. His teaching interests include Constitutional Law, Environmental Law and Law of Education. He is a member of the Environment Law Commission, Switzerland, International Council of Environmental Law, Germany, and is also on the General Council of Ram Manohar Lohiya National Law University, Lucknow.

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MANIK SINHA (MANIK CHANDRA SINHA) s/o Late Prof. J.P. Sinha, M.Sc., LL.M. (Banaras Hindu University), ***Former-Dean, Faculty of Law****, Dr. R.M.L. Avadh University, Faizabad,* **SENIOR ADVOCATE, GOVT.OF INDIA, High Court, Lucknow** *and Former- Hony.* ***Juvenile Magistrate (1st Class), Juvenile Court****, Faizabad for 15 years since 25-10-1988.*

Enrolled as an **Advocate by the U.P. Bar Council** *, Allahabad on 19-03-1993. Advocate, High Court, Lucknow Bench, Lucknow. About 32 years standing with specialization in Constitutional Law, Service Laws and Income Tax matters for last more than about 30 years.*

Contested over one dozen landmark cases resulting into laying down the laws by the High Court, Lucknow Bench, Lucknow, which were reported in various Law Reports.

Senior Standing Counsel in the High Court:*(1) Dr. R.M.L. Avadh University, Faizabad, (2) Narendra Dev University of Agriculture & Technology, Kumarganj, FAIZABAD, (3) Chandra Shekhar Azad University of Agriculture & Technology, Kanpur, (4) Dr. B.R. Ambedkar University, Agra, (31.3.03 –20.4.05), (5) U.P. Technical University, Lucknow.*

*ACADEMIC ACHIEVEMENTS Awarded "***Social Scientist of the year -1999"** *Award in the field of "LABOUR & SERVICE JURISPRUDENCE " by the National Environment Science Academy, New Delhi in a function Chaired by Hon'ble Mr. Justice H.R. KHANNA , Judge (Rtd.) of the Supreme Court of India, Fellow, National Environmental Science Academy, New Delhi, Fellow, Indian Academy of Social Sciences, Allahabad and Member, U.P. State Legal Aid & Advice Board, Lucknow (1984-89)*

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INTERNATIONAL SEMINAR : Paper on "ROLE OF JOURNALISTS IN AVERTING DANGERS OF WAR IN INDIAN OCEAN "International Organization of Journalists, Paris at Delhi in Sept.1984..

NATIONAL SEMINARS; Paper on "LAW & SECULARISM IN INDIA" Indian Academy of Social Science at Varanasi in 1976, Paper on "FORMULATION OF LEGAL AID CLINIC- SOME SUGGESTIONS" Seminar Organized by Govt. of U.P. on 18-10-1981,Paper on **"STREAMLINING THE ADMINISTRATIVE MACHINERY"-** *UGC Seminar at B.H.U. Varanasi on 05-02-1977, Paper on "IDENTIFYING LEGAL IMPEDIMENTS ON ACCELERATING RURAL DEVELOPMENTS IN INDIA " Seminar on Indian Academy of Social Sciences , Allahabad , at Kanpur on 02-08-1978, Paper on "RURAL DEVELOPMENT & ENVIRONMENTAL LAWS" National Seminar on National Environmental Science Academy & Annamalai University at Waltair in June , 1989, Paper on "RIGHT TO RECALL THE LEGISLATORS"- Seminar of Indian Academy of Social Sciences, Allahabad on 14-12-1983, Paper on* **"AIR & SOUND POLLUTION IN INDIA"** *Seminar of Legal Aid & Advice Board . U.P. at Lucknow on 19-03-1983, Paper on "SOCIAL JUSTICE AND LEGAL AID MOVEMENT"- University Grants Commission Seminar at Faizabad on 06-12-1986, Paper on CHALLANGE OF COMBATING THE HAZARDS OF WATER POLLUTION-A LEGAL PERSPECTIVE: National Seminar organized by Dr. R.M.L. Avadh University, Faizabad in 27-7-2013 and Paper on* **EVOLUTION AND DEVELOPMENT OF HUMAN RIGHTS AND ITS ENLARGEMENT THROUGH JUDICIAL DELINEATION***: UGC Seminar at Faizabad on 07-12-1013.*

Professor (Dr.) USHA TANDON, Chief Editor

Professor (Dr.) Usha Tandon is the **Head of Campus Law Centre, University of Delhi**. Her teaching experience spans for a period of 25 years. She served on deputation as Director of a Five Year Law School- Vivekananda draprastha University, Law School, GGS In- of interest include Envi- Delhi (2005). Her areas ronmental Law, Gender Justice, Family Law, and Population Law. She has been working, since 1991, on the issues of hu- man development and Population Law with special reference to the human rights of women and right to wholesome environment. Her book on Population Law in In- dia is the only book of its kind which covers vari- ous population issues through the perspective of law and has been re- ferred by the American report **"Women of the World: Laws and Poli- cies Affecting their Re- productive Lives- South Asia"** Centre for Repro- ductive Rights (ed) New York (2004). She has been the Fellow of Max Plank Institute for Inter- national and Compara- tive Law, Hamburg, Germany,(2011); Inter- national Institute of Hu- man Rights, Strasbourg, France, (2007) and has to her credit Ciedhu which specializes her for the university human rights teaching. She has the honor of being invited by the Centre for Human Rights and Humanitarian Law, American University Washington College of Law, USA to pursue research on Human Rights and Women's Reproductive Health, (2004). She has also been invited by Korea Environment Cooperation to speak on **"Green India Mission"** in the 6th Policy Consultation Forum of the Seoul Initiative Network on Green Growth: Economic System Economy" in Busan, Republic of Korea,(2011), organized by Economic and Social Commission of Asia and Pacific (ESCAP) in cooperation with Ministry of Environment of Republic of Korea. Recently, she has been invited by the Royal Court of Bhutan, as a Guest of Honour to participate in the inauguration of new Supreme Court of Bhutan, by Indian Prime Minister in June, 2014.

As an expert from India, she participated at Seoul in an International Symposium on Constitutionalism in Asia organised by the Constitutional Court of Korea (August, 2014). As an expert from India, she also participated in the Kathmandu School of Law, Nepal in the deliberations on the curriculum for **"Human Rights of Women"** (2003). She has 37 research papers to her credit published in the journals of international and national repute. Her published work got applauded by the Supreme Court of India (2003). She has presented papers at International Conferences in various countries including USA, France, Germany, China, Singapore, South Korea, Malaysia and Nepal. She has been supervising research work for LL.M. and PhD scholars and has successfully completed the research projects sanctioned by the University Grants Commission, Delhi and the National Commission for Women, Delhi. She holds professional memberships with Population Association of America, MD, USA; South Asian Law Schools Forum for Human Rights (founder member) Kathmandu; Institute for Constitutional and Parliamentary Studies, New Delhi (life member), All India Law Teachers Congress, New Delhi (founder member); Indian Law Institute, New Delhi (life member) and Indian Society for International Law, New Delhi. **Currently she is the Editor-in-Chief of Journal of the Campus Law Centre and Member, Editorial Board of US-China Law Review.**

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Subhash Chandra Singh (M.A., LL.M., Ph.D.) is a Professor in the School of Legal Studies, Assam University (A Central University), Silchar. He has a distinctive academic career with more than thirty years of teaching experience in state and central universities. His areas of specialization are Criminal Law and Human Rights. Dr. Singh got the opportunity to visit and lecture in various central law institutions in India. He has authored and edited six books and published more than one hundred articles in different journals of national and international repute.

At present, Dr. Singh is Dean, School of Legal Studies, Assam University, Silchar. Before joining Assam University to the post of Professor in 2011 Dr. Singh served Mahatma Gandhi Kashi Vidyapith, Varanasi where he held the position of Head & Dean for many years. He was also the Director, Legal Cell, Mahatma Gandhi Kashi Vidyapith. Dr. Singh has also honoured as chairperson and resource person in conferences, seminars, symposiums and workshops. Dr. Singh is the editor of several journals.

Profile, Manisha Verma, **Publication Editor** (Chief Executive)

I am Manisha Verma completed my B.Tech. in Electronics Engireering from Pune University and join as a R&D Engineer in Indian Telephone Industry, developed a system "Power Distribution Automation". This system is designed for handling huge electrical power. There is a need to transport quantum of power efficiently with reliability to the end users. PDA is designed on integrated system concept. It includes control, monitoring and protection of the distribution system. Basically microprocessor and microcontroller based system designed in assembly language MCS-51 family through RF communication and DOS Operating System. After that worked at Cat Vision Ltd. Designed project band trap and channel trap for satellite communications equipment, RF Modem designed HDLC protocols(Half Duplex)high speed data transfer ABM mode using (GMSK) FM Technology.

Then join TCS Ltd. as software engineer as contract basis where assigned a project on Bharat Electronics Limited Ghaziabad where we had to designed and developed **SIMULATOR** for P17 of **Combat Managment System(CMS)** in language C++ and Linux operatng system. P17 is the name of the ship of Indian naval force which lassed with radar, sonar, torpedoes, gun, missiles, aircraft. Basically, simulator was designed for the training, testing and evaluation. Where I have implemented Sig Alarm on event logger on Brahmos missile launcher successfully. Brahmos was the biggest missile launcher which consist 240 missile. Basically Combat Management System (CMS) worked on time share mode concept and facing the problem of signal delay due to timer priority setting and Sig Alarm is not the timer, it was the interrupt which handled the situation without delay.

After finishing my contract in TCS, i started my own software development firm and successfully designed various data base driven management system like Advocate Management System, Society Management System, Form Management System, School Management System on using platform .NET in front end and MS Access in back end on Windows Operating System.

After that suddenly I got opportunity to work with founder and Vice President of NESA, Prof. TRC Sinha for technical support as well as publication editor in NATIONAL PRINTER & PUBLISHER. Actually he wanted to hand over his dream to me in order to get free to leave this world peacefully. As I promised him I started **Academic And Research Publications** with collaboration of JPMS Society, is a Society registered under the Societies Registration Act and its Registration No. is 1649/1986-87. I am also the director of JPM Computer Institute, a company incorporated in 2009 under Company Act 1956. It is an authorised affiliated COMPUTER EDUCATION CEI of RAJEEV GANDHI COMPUTER SAKSHARTA MISSION (R.G.C.S.M.) assigned branch code UP- 240.

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Dr. S. C. ROY, Coordinating Editor

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Dr. S. C. ROY, is Associate professor in Chanakya National law University Patna. He did his graduation, post-graduation and doctorate from T.M. Bhagalpur University in 'English' literature' and 'Law',(Ph.D.-IPRs).Before joining academics, he joined bar at Bhagalpur district court and practiced for five years. Dr. Roy is an academician and believes in the cult of student – 'a disciplined learner'. Besides teaching in Chanakya National Law University, he has been visiting professor in PUSA Agriculture University (Bihar), NIPER- Hazipur, Bihar Judicial Academy Patna, WALMI Patna ,NIRD and Environmental Science P.U. He has addressed the Insurance trainees at various insurance training institutes in Patna and RC and OP participants. He has qualified licentiate and Associate (part) in Insurance from Insurance Institute of India (III) Mumbai and company secretaries (inter-part) exams. He has undergone online courses in Disaster management from NIDM.

He has undergone various training program from the reputed Universities and Academic Staff Colleges,i.e. refresher courses ,professional development courses and legal training – BHU, ISIL ,NLU New Delhi, NLSIU Bangalore, NUJS Kolkata, CNLU Patna, Allahabad university, ASC Lucknow, ASC Kumaun University Nainital(UK), Indian Institute of Public Administration, New Delhi, NIRD, – Patna. Dr. Roy has credit of participation and presentation of research papers in more than 100 national as well as international seminars / workshops in India. He has delivered Keynote address and chaired the session in many seminars. He has been seminar coordinator also. He is Academic and Research coordinator at CNLU. He has contributed research papers in journals – Ideal Research Review, Voice, Chotanagpur Law Journal, Nayay Sandesh, Juris Ray, Relevance, PCCR, A Journal of Asia for Democracy and Development, Assam Law Times, Social Vision, International journal of psychology and education and chapters in various books, i.e. Creative activities and the law, Celebrating satyagraha, Changing dimension of women empowerment etc on different Socio-economic-politico-legal issues totaling around sixty. He is advisor and editor of journals also. He has authored books –"Lectures on Intellectual property Law", "An analytical study of Intellectual property Rights in India" and "Intellectual property Rights—A Prismatic View(Ed)". He is academic and research coordinator in the University and has produced one Ph.D. in 2013. Dr. Roy has been member of various Academic organizations / associations in India. , i.e. ISC, ISLE, ICA, IIPA, AILTC, AITEA, etc. The hunger for learning is continued with a mission to build up 'entrepreneur professionals' in the university and a message that knowledge is not only power or instrument of power rather it makes a man 'human'.

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DR. A.K. SINGH,
Assistant Professor, Department of Law, K.S. Saket P.G. College Ayodhya, affiliated to Dr. R.M.L. Avadh University, Faizabad, U.P., Member, Editorial Board
Email: *ajayksinghlaw@gmail.com,*
Mob. No. 9415982234

Dr. Ajay Kumar Singh completed his B.A. (Hons.), LL.B., LL.M., and Ph.D. from Banaras Hindu University, Varanasi. He has been awarded by UGC, NET & JRF. He has undertaken Major Research Project from UGC, New Delhi, in December 2012. He has presented a number of research papers in Regional, State and National Level Seminars and Conferences. He has also published a number of Research Papers at National Level Journals.Till date he has one edited book in his account entitled **"Human Rights And Social Justice"**. *He has organising several U.G.C. sponsored national workshop and seminars. Large volumes of his research work are forthcoming.*

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DR. RAJU MAJHI. LL.M., Ph.D. (BHU)
Assistant Professor in the Faculty of Law,
Banaras Hindu University, Varanasi.

Profile

Dr. Raju Majhi. LL.M., Ph.D. (BHU) is Assistant Professor in the Faculty of Law, Banaras Hindu University, Varanasi. *He has a teaching experience of more than 9 years. He obtained his Ph.D. degree from Banaras Hindu University, Varanasi on the topic "Tribal Laws and their implementation: A case study of Chhotanagpur". He is the Managing Editor of BHU Law School Newsletter. He holds many important administrative responsibilities. He has contributed 6 chapters in edited books. He edited one book. He has presented papers in more than 45 National and International Seminars. He is Associate Member of ISIL, New Delhi and Life Member of Academique- A Discussion Group, Varanasi. His area of interest includes Tribal Laws, International and Human Rights Laws, Labour Laws, Commercial Laws and Intellectual Property Rights (IPR).*

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